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(INCLUDING HITHERTO UNPUBLISHED MSS)

OF

SIR JOHN DAVIES:

FOR THE FIRST TIME COLLECTED AND EDITED:

WITH

FAC-SIMILES,

Memorial-Introduction and Notes:

BY THE

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REV. ALEXANDER B. GROSART,

ST. GEORGE'S, BLACKBURN, LANCASHIRE.

IN THREE VOLUMES.

VOL. III. PROSE.

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I. THE
QUESTION CONCERNING IMPOSITIONS.

NOTE.

For the historical memorableness of this treatise, and details concerning it, see our Memorial-Introduction in Vol II. This is as nearly as possible an exact reproduction of the original text, its canine Latin and arbitrary spelling, &c. included. G.

THE
QUESTION
CONCERNING
IMPOSITIONS,
Tonnage, Poundage,

Prizage, Customs, &c.

Fully stated and argued, from
Reason, Law, and Policy.

DEDICATED
To King *JAMES* in the latter end
of his Reign.

BY
Sir JOHN DAVIES, His then Ma-
jesties Attourney Generall.

LONDON,
Printed by S. G. for *Henry Twyford*, in
Vine-Court Middle Temple, and *Rich:
Marriot*, under the Dyall in Saint
Dunstons Church-yard, London. 1656.



TO THE
KING'S

Most Excellent
MAJESTIE.

THIS Question, SIR, Concerning your Majestie's Prerogative in laying Impositions upō Merchandizes, ought not to have been made or moved at all; howbeit, it hath been stirred and debated in Parliament, it is now become an Argument of such Dignity and Importance, as the best-able amongst your Servants learned in the Law, may well imploy their best learning in the discussing thereof. For my part, though I find my self unable to handle this Noble Question, as the weight and worthinesse requireth; yet have I upon sundry occasions arising from the course of my service, collected such notes, and drawn together such materials, as may be of use in the building of a Fortresse in the defence of this Prerogative; and sure I am, that if your Majestie will vouchsafe to cast your eye upon these Collections, that your Judgment will make a far better use and application thereof, than I who have gathered the same, can possibly do; these little sparks of knowledge being taken into your

Majestie's consideration, wil instantly multiply and arise into a flame, and so give a great light for clearing of this Question: This learning within my hand, is but a Spade, in your Majestie's hand will become a Scepter. I have onely like the poor Indian, digged up the Oare of Mine, which being brought into the King's Mint, and refined there, becomes part of the royall Treasure. For the Argument it self, it will hardly receive any Ornament,

Ornari res ipsa negat, contenta doceri.

The best light I can give it, is *Lucidus ordo*, by breaking it into *Capita rerum*, and casting it into a plain and naturall method; it is somewhat long, and in *Multiloquio non deest peccatum*, saith Solomon; it is also mixt with some reasons of State, wherein a common Lawyer may easily make a *Solæcism*; yet such as it is, my zeal to advance your Majestie's Service, hath moved me to present it to your Majesty, with all humbleness, and with some hope, that this dutifull pains shall purchase a pardon for the errours therein committed,

By your Majestie's un-
profitable Servant,
and humble Sub-
ject,

JOHN DAVEIS.



AN
ARGUMENT
UPON
The Question of *Imposition*,
digested and divided into sun-
drie Chapters by one of His
Majestie's learned Counsel
in IRELAND.

CHAP. I.

*The exposition and meaning of certain words, which
do shew the true state of the Question.*

THE *Question* it self is no more than this,
Whether the Impositions which the
King of England hath laid and levied
upon Merchandize, by vertue of his Prerogative
onely, without Act of Parliament, be lawful or
warranted by the Law of England.

By the word '*Imposition*,' we mean only such
rates or sums of money as the King by Letters-
Patents, under the Great Seal of England or Ire-
land, hath set upon Merchandizes imported and

exported, and commanded the same to be paid and levied to his Majestie's use, over and above the Customes and Subsidies formerly due and payable for the same merchandizes.

By the word Merchandizes, we mean only such goods or Merchandizes as are transported over the Seas, from one Realm or Dominion unto another, to be sold or exchanged for reasonable gain or profit; for upon the ingate or outgate of Commodities so crossing the Seas only; Customes, Subsidies, and Impositions for Merchandizes are paid and taken, and not for any Commodities carried too and fro by Sea and Land, within one and the same Realm and Dominion.

By the Law of England, we understand not only our customary Common Law, and our Statutes of England, which are Native and peculiar to our Nation only, but such other Laws also as be common to other Nations as well as us; have been received and used time out of mind by the Kings and people of England, in divers cases, and by such ancient usage, are become the Lawes of England in such; namely, the generall Law of Nations, and the Law-Merchant, which is a branch of the Law, the Imperial or Civil Law, the Common or Ecclesiastical Law, every of which Laws so far forth as the same have been received and used in England, time out of mind, may properly be said to be the Laws of England.

CHAP. II.

Of the general Law of Nations, or Jus Gentium, and the force thereof in all Kingdoms, that traffique and commerce is a principal subject of that Law, and that it giveth power unto all Kings,

to take Customes and Impositions upon Merchandizes, and that the Crown of England hath many Prerogatives annexed to it by the Law of Nations, of which our Common Law taketh notice, and doth admit and approve the same.

Jus Gentium, or the generall Law of Nations, is of equal force in all Kingdoms, for all Kingdoms had their beginning by the Law of Nations; therefore it standeth with good reason that the Law of Nations should be of force, and of like force in all Kingdoms; and for this cause, in the Realms subject to the Crown of England, the Law of Nations also is in force in such cases, especially wherein the King himself, or his Subjects, have correspondence or commerce with other Nations who are not bound in those cases, by the Municipall Laws of England.

Omnes populi (saith Justinian) *qui legibus & moribus reguntur, partim suo proprio, partim communi omnium hominum jure utuntur: nam quod quisq: populus ipse sibi Jus constituit id ipsius proprium Civitatis est, vocaturque jus Civile; quod vero naturalis ratio inter omnes homines constituit, id apud omnes homines plerumque custoditur, vocaturque Jus gentium, quasi quo jure omnes gentes utuntur;* and in the same place it is said, *Jus Gentium omni hominum generi commune est, & ex hoc Jure Gentium omnes pene contractus introducti sunt, ut emptio, venditio, locatio, conductio, societas, depositum mutuum, &c.*

And with this agreeth our Doctor and Student, lib 1. 1 cap. 2. where it is said that Trade and Traffique is by the Law of Nations; so that Commerce, Trade, & Traffique for Merchandize,

between the people of several Nations and Kingdoms, is a principal subject of the Law of Nations; and therefore to that question that hath been made in England, Whether the ancient Customes payable for Merchandizes, did first grow due by our customary Common Law or Statute Law of England? Why may I not answer, that neither the Customary Law, nor the Statute Law of England, but the generall law of Nations did first give these duties unto the Crown of England?

For as the Law of Nations was before Kings, for Kings were made by the Law of Nations, *Ex jure Gentium Reges originem traxerunt*, saith Baldus; So Kings were no sooner made by the Law of Nations, but presently the same Law, *cum creatus fuerit Rex ei omnia regalia conceduntur, & competit omnibus Regibus jus imponendi quantum habet Regalia*, saith Baldus, *Vectigalia introducta sunt a jure, &c.* which is the Law of Nature or Nations, *Ideo non otiosa sed favoralia*, saith another Doctor, did annex this Prerogative to their several Crowns, *Vectigal origine ipsa jus Caesarum & Regum patrimoniale est*, saith another; *Inhæret Sceptro* saith another; and therefore when our ancient British Kings took up Customes for Merchandizes transported into France, as Strabo writeth, *Brittani vectigalia tollebant gravia earum rerum quas brevi trajecta in Galliam importabant*; shall we presume they did it by Act of Parliament? no, for doubtless they did it by vertue of this Prerogative given unto them by the Law of Nations; for Kings upon their first institution did greater things than this, by their Prerogative without the consent of the people, *Vetustissima coronæ jura ex singulari Regum decreto primitus*

orta, saith a learned Doctor; and at first saith Justinian, *Arbitria Regum pro legibus fuere*, and so saith Halicarnassus, *lib 3. Cicero offic. lib 2.* And truly as Customes and Impositions taken upon importations of Merchandizes, being most properly called *Vectigalia, a mercedibus evectis & invectis*, are the most ancient duties payable to the King; so are the same grounded, saith Bodin, upon the greatest reason and equity in the world, *quid est enim rationi & æquitati magis consentaneum quàm & is qui in nostro territorio & ex nostris questum facit principi nostro cujus permissu & sub cujus protectione negotiatur aliquod perdat & presolvat?* And this common reason and equity which is the ground of these duties payable for Merchandizes, what is it else but the Law of Nations? which is nothing else but that which common reason hath establisht amongst all men for the common good of all men, and which all Nations have received and imbraced for their mutual benefit and commoditie.

Neither is this the onely Prerogative which the King of England hath by the Law of Nations, *habet & Rex in regno suo* (saith Bracton) *alia privilegia de jure Gentium propria, viz. Soreceum maris thesaurum insentum grossos pisces, & balenas & sturgiones warias, &c. huiusmodi de jure Gentium pertinent ad Coronam*, saith Stampford, *Prerogativa Regis, fol. 37. 6.* Adde hereunto the absolute power of the King, to make War and Peace, League and Truces, to grant safe Conducts, to pardon all Offenders, to distribute all degrees of Honour, and the like, wherein the King hath sole and absolute power *Merum imperium & non mixtum*, and which Prerogative is as antient as the Crown,

and incident to the Crown by the Law of Nations.*

Lastly, for the proof that our Common Law doth acknowledge and prove the Law of Nations in most of these cases. The Book 19 Edw. 4. 6. doth approve the King's absolute power in making War, Peace and Leagues; and in 37 Edw. 6. 20. That part of the Law of Nations, whereby the High Constable and Marshall of England, do proceed in their Courts of War, and Chivalrie, is called the Law of the Land. We finde also the King's sole power in 11 Hen. 4. *Rot. Parliament. in Archivis turris* London, for coyning of Money; we have the case of Mines, *Com.* 316. for safe conduct of Merchants, and stop of Trades, *tempore guerræ*, and Letters of Reprisall we have 7. Edw. 2. 19. 2. R. 3. 2. *Magna Charta cap.* 30. and the Register wherein we find Writs of Reprisall.

CHAP. III.

Of the Law Merchant, which is a branch of the Law of Nations, and how it differs from our Common Law, and how in the judgement of our law Merchandizes do differ from other Goods & Chattels which do not crosse the Seas, and how the Common Law and Statute Law of England do admit and allow of the Law Merchant.

Mercatura vel Societas Mercatorum est magna Res-publica (saith Ulpian) and therefore that Commonwealth of Merchants hath alwayes had a peculiar and proper Law to rule and govern it. This Law is called the Law Merchant, whereof the Laws of all Nations do take special knowledge; first both the Common Law and Statute Law of England do take

* *Stamford preogat Regis fol.* 37. 6.

notice of the Law Merchant, and do leave the causes of Merchants and Merchandizes to be decided by the rules of that Law; for what saith the Book 13 *Edw.* 4. 9, 10? A Merchant Stranger made sute before the King's Privy Council for certain Bailes of Silk feloniously taken from him, and it was moved that this matter might be determined by Common Law: unto which motion the Lord Chancellor doth there answer; This sute is brought by a Merchant, who is not bound to sue according to the Law of the Land, nor to tarry the tryall of twelve men, nor other solemnity of the Law of the Land; albeit, the King hath jurisdiction of him within the Realm, and may cause him to stand to his Judgement, yet this must be according to the Law of Nature, which some call the Law Merchant, which is a Law universall throughout the world. These are the words of that Book, and it is there resolved by all the Justices, That if the Merchandizes of such a Merchant stranger, be stolen and waved by the Felon, the King himselfe shall not take those Merchandizes as waifes, though in that case the goods of another person were lost by the Common Law of England. Doth not this case make it manifest, that in the judgement of our Common Law, Merchandizes that crosse the Seas, are goods of another nature, quality and consideration, than other goods and chattels which are possessed within the Realm, and do not crosse the Seas? This learning is not common in our Books, and therefore I think it mee to exemplifie this difference with more cases in this point.

If two Merchants be Joynt-Owners, or Partners in Merchandizes, which they have acquired by a Joynt-Contract, in this case the one shall have

an action of Account against the other, *die legum mercatoriam*, saith the Register, fol. 135. and *F. N. 117. D.* and yet by the rule oft the Common Law, if two men be joyntly possessed of other Goods which are not Merchandizes, the one shall not call the other to account for the same.

Again, if two Merchants have a joynt Interest in Merchandizes, if the one die the Survivor shall not have all, but the Executor of the party deceased, shall by the Law Merchant call the Survivour to an account for the moytie *F. N. 117. D.* whereas if there be two Joynts of other goods which are not Merchandizes, the Survivor shall have all, *per jus accrescendi*, even by rule of the Common Law.

Again, in an Action of Debt, upon a simple Contract which is without Deed in writing, the Defendant by the Common Law, may wage his Law, that is, he may bar the Plaintiff of his Action by taking an Oath that he doth not owe the debt nor any part thereof, and yet in *Itin. Derby 2 Edw. 3. John Crompton* Merchant, upon a Contract without Deed, the Defendant would have waged his Law, but was not permitted so to do, and so Judgement was given against the said Defendant.

Again, the goods of Ecclesiastical persons are discharged of Toll by the Common Law, *si non exercent Marchandizas de eisdem*, saith the Register, 259. a. for then their goods are charged, being now become goods of another nature, when the same are turned into Merchandizes; so are the goods of the French Nobility discharged by Gabels and Impositions if they traffique not, but if they traffique, saith Bodin, their goods are charged like other Merchandizes.

Again, for goods wrongfully taken within the

Land, the Common Law giveth remedy against the Trespasser, or the wrongfull Taker onely; but if an English Merchant be spoiled of his Merchandizes upon the Sea, or beyond the Sea, by the Subject of another King, the Register doth give him a Writ of Reprisall against all the Subjects of that Nation, *Regist.* 122.6. and 46 *Hen.* 3. we find a more brief cause of Justice, for there the King in respect of the loss which certain Merchants of London had sustained, by an arrest made of their goods, made by the Countesse of Flanders, doth grant unto them all the Merchandizes whereof the Flemings were possesst in England, *Rot. Pa.* 3. *E.* 1. *m.* 19, in *Archivis turris London*: Whereupon the Lord Mayor of London, did seize so much goods of the Flemish Merchants as amounted to 730, Marks, and delivered the same to Thomas Debassing, and other Merchants, who had suffered loss by that arrest; and in the same Roll of 3 *Ed.* 1. the Lord Mayor of London, and Bailiffs of Southampton, are commanded by the King's Writ, *Quod omnes Mercatores Londienses ad partes Anglie accedentes per bona & catalla sua distringantur sed in legem mercatoriam & consuetudinem Regni ad satisfaciendum Mercatoribus Florentinis de pecuniis ipsi mutuo tradiderunt Willielmo Episcopo Leodiensi.* Here we see that *Lex mercatoria*, which doth apparently differ from the ordinary Common Law of this Kingdom, is said to be *Consuetudo Regni*.

And lastly, in a sute at the Common Law no man's Writing can be pleaded against him as his Act and Deed, unlesse the same be sealed and delivered; but in a sute between Merchants, Bills of Lading, Bills of Exchange, being but Tickets without Seals, Letters of advice and

credences, Policies of assurance, Assignations of debts, all which are of no force at the Common Law, are of good credit and force by the Law Merchant.

Thus we see how Merchandizes do differ from other goods and Chattles in the eye of the Law, and how the Law Merchant doth differ from the common Law of England, and how the common Law doth admit and allow thereof. Our Parliaments likewise have not onely made extraordinary provision for the more speedy recovery of Debts due unto Merchants for their Merchandizes, than is provided by our common Law, as appeareth by the Statute of Acton Burnell, made the 11 Ed. I. and the Statute *de Mercatoribus* made 13 Ed 1. but also have course of proceedings, in cases of Merchants differing from the course of our Common Law, for by the Statute of 27 Ed. 3. *cap.* 2. it is declared, that the proceedings in causes of Merchants shall be from day to day, and hour to hour, according to the Law of the Staple, and not according to the course of the Common Law; and by another Article in the same Parliament, that all Merchants comming to the Staple, should be ruled according to the Law of Merchants, touching all things comming to the Staple, and not by the Common Law of the Land; and by another Article, that neither of the Benches, nor any ordinary Judges of the Common Law shall have any Jurisdiction in those cases; and lastly, that the Law of Marque and Reprisall, which is a branch of the Law Merchant, shall be used as it had been used in times past. So as the Parliament doth but declare the ancient Law, and doth not introduce a new Law in those cases.

Untill I understood this difference between Merchandizes and other goods, and between the Law Merchant and the Common Law of England, I confess I did not a little marvell, England being so rich, and entertaining Traffique with all Nations of the World, having so many fair Ports and so good Shipping, the King of England also being the Lord of the Sea, and also a principall part of his Royal Revenue consisting in duties payable for Merchandizes, so as many Questions must of necessity arise in all ages touching Merchants and Merchandizes,—What should be the cause that in our Books of the Common Law of England, there are to be found so few cases concerning Ships or Merchants, or concerning Customes or Impositions payable for Merchandizes.

But now the reason thereof is apparent, for the Common Law of the Land doth leave these cases to be ruled by another Law, namely the Law Merchant, which is a branch of the Law of Nations.

The Law Merchant, as it is a part of the Law of Nature and Nations, is universall and one and the same in all Countries in the World, for as Cicero saith of the Law of Nations, *Non erit alia lex Romae, alia Athenis, alia nunc, alia posthac, sed & omnes gentes & omni tempore una lex eademq; perpetua continebit, &c.* So may we say of the Law Merchant, there is not one Law in England, another in France, another in Spain, another in Germany, but the same rules of reason, and the like proceedings of the Law Merchant are observed in every Nation; for as our Chancellor of England affirmeth, 13 E. 4. 9. That the Proceedings of the Law Merchant ought to be according to the Law of Nature, which is universall; so say the Civilians of several

Nations. The Italian Doctor saith, *In curia mercatorum uaturalis æquitas præcipue expectanda, & ex æquo & bono causas dirimendas esse*; The French man saith, *In curia mercatorum proceditur de mera æquitate omiſſis ſolemnitatibus & apicibus juris*; The Spaniard likewise saith, *Apices & subtilitas juris non conſiderantur in foro mercatorio*; whereby it is manifeſt, that cauſes concerning Merchants and Merchandizes, are not wont to be decided by the peculiar and ordinary Laws of every Country, but by the generall Law of Nature and Nations, out of which reſulteth this Conclusion. Suppose it be admitted that by the poſitive Law of the Land, Taxes and Tallages may not be laid upon our goods within the land, without an Act of Parliament, yet by the Law of Nations, and by the Law Merchant, which are alſo the Law of England, in caſes of Merchandizes the King of England, as well as other Kings, may by vertue of his Prerogative, without Act of Parliament, lay impositions upon Merchandizes croſſing the Seas, being goods whereupon the Law doth ſet another character than goods poſſeſſed in the land, as is before expreſſed.

CHAP. IV.

Of the Imperial or Civil Law, and of the extent of the Jurisdiction thereof: of what force it is at this day within the Monarchies of Europe, and in what caſe it is received within the King of England's Dominions, and how it warranteth all Kings and Absolute Princes to lay Impositions upon Merchandizes.

WHEN the City of Rome was *Gentium Domina & Civitas illa magna quæ regnabat ſuper Reges Terræ*

The Roman Civil Law, being communicated unto all the Subjects of that Empire, became the Common Law, as it were, of the greatest part of the inhabited world; yet the extent thereof was never so large as that of the general Law of Nature, as is noted by Cicero, *Offic. lib. 2. Majores nostri aliud jus Gentium, aliud Civile jus esse voluerunt, quod enim civile non idem continuo Gentium, quod autem idem civile esse debet*, whereby it is manifest, that the Law of Nations is and ought to be a binding Law in all States and Countries; as it is binding, so it is perpetuall, and cannot be rejected as the Roman Civil Law is rejected in most of the Kingdoms in Europe, in in such cases as do arise within the body of every Kingdom.

In France, Philip le Bell (saith Bodin) *de Repub. lib. 2. cap. 8.* when he erected the Courts of Parliament at Paris, and Mountpelier, did expressly declare, That they should not be bound in their judgments by the rule of the Roman Civil Law, and in erecting of all the Universities of France, they are charged in their severall Charters, not to revive the profession of the Civil and Common Law, as of binding Laws in that Kingdom; and therefore *Earum non imperio sed ratione utimur*, saith another learned Doctor of France.

In Spain, saith Bodin, in the same place, several Kings have made Edicts. that no man upon pain of death, should allege the Roman Civil Law as a binding Law in their Dominions.

And that Stephen King of Spain did forbid the publique pleading of the Civill Law.

As for England, to omit what Pope Elutherius wrote in his Epistle to Lucius the first Christian Monarch of the Britains, and whereof mention is

made in Saint Edward's Laws *de protestate Regia & Ecclesiastica*, published in the time of 3 Hen. 8. *petiistis* (saith he) *leges Romanas & Cæsaris vobis transmitti quibus in regno Britaniæ uti voluistis, leges Romanas & Cæsaris reprobare possumus, legem Dei nequaquam, &c.* In a Parliament holden in England 11 R. 2. when a course of proceedings in Criminal causes, according to the Civil Law was propounded, an answer was made by all the States assembled, That the Realm of England neither had been in former times, nor hereafter should be ruled and governed by the Civil Law, *Rot. Parliament. 11 R. 2. in Archivis turris*, London, and accordingly Chopinus the French Lawyer in his Book *de Domino Franciæ tit. 28.* speaking of the Civil law, *hujus Romani juris* (saith he) *nulus apud Anglos usus, sed ex veteri gentis instituto Britani reguntur legibus municipalibus quas illis majorum mores præscripserunt.*

But this is to be understood of causes arising within the Land onely; for all Marine and Sea causes which do arise for the most part concerning Merch. and Merchandizes crossing the seas, our Kings have ever used the Roman Civil Law for the deciding and determining thereof, as the Romans did use the Law of the Rhodians in those cases, according to the memorable rescript of the Emperour Anthonius, *terram suis legibus Rhodiis Regi.* How be it now, those Laws of the Rhodians are digested and incorporated into one body of the Civil Law; the jurisdiction touching causes arising upon the Sea, is committed by the King of England to his Admirall, who in his Court of Admiralty doth proceed in those cases according to the rule of the Civil Law.

Now for the Rules of the Civill Law touching the power of Kings, in laying Impositions upon Merchandizes, the same are clear without question, and observed without contradiction in all the nations of the world, *Regii tantum juris ac muneris est vectigalia imponere, redditus, seu vectigalia portus quæ perveniant ex his quæ in portum vel ex portu vehentur regalia sunt, Rex qui non recognoscit superiorem potest instituere nova vectigalia, &c. hoc est jus totius mundi, totus mundus hoc jure utitur,* the D. Doctors who interpret the Imperiall Law, have their Books full of these Rules.

And if it be objected, That these rules of the Imperiall Law are onely intended of the Emperour, a learned Civilian hath this position, *plus juris habet Rex in Regno quam Imperator in imperio, quia Rex transmittit regnum ad successionem quod non facit imperator, qui est tantum electionis, &c.*

Lastly, when I speak of the rules of the Civil Law, and make use thereof, I do apply the same onely in cases of Merchandizes crossing the Seas, which I do expresse by way of protestation, that I may not be mistaken here, and in other places where I cite the Text of the Imperiall Law, as if I intended that Law to be of force in England generally, as in other places.

CHAP. V.

Of the Canon or Ecclesiastical Law, and how far forth it doth examine and resolve this Question in cases of Conscience only.

THE Canon Law is received and admitted in England, as a binding-Law in cases Ecclesiasticall which are indeed the proper Subjects of that Law.

But this question of Imposition is meerly Civil, and therefore the Canon Law doth not handle it but in cases of Conscience only, & so indeed it doth examin and determine in what cases an absolute Prince may with a good conscience lay and demand new Impositions, *Decret. causæ 24. Quæsti. 3. Princeps potest indicare nova vectigalia*, and in *Summa summarum tit. de gabellis & exactionibus*, these rules and distinctions are laid down.

Quilibet Monarcha potest imponere novum vectigal, quod tamen boni viri arbitrio moderandum est, potest Princeps imponere vectigal ultra conventionem in duobus casibus. i. quando redditus ejus non sufficiunt ad segimē boni & cōmunis & decentiam status ejus. 2. quando non sufficiunt ex nova emergentia principes enim sunt à Deo instituti ut nō quærant propria Lucra, sed cōmunem utilitatem populorum, lilia agri neque arant neque &c., which may be applyed, saith a French Monk, to all Princes, but espically to the Kings of France, because they bore the Lilies.

The Canonists do likewise allege the example of our Saviour, who paid an Imposition of Poll-money, and wrought a miracle to enable himself to do it; that the Tribute-money which Christ commanded to be paid, '*Date Cæsari quæ sunt Cæsaris,*' and the Custome which Saint Paul willeth every Christian to pay willingly, '*reddite omnibus, cui tributum, cui vectigal,*' were but Impositions raised by the Emperour's Edict only, without the consent of the people; and yet Saint Paul requires obedience to Princes in that case, not only for fear of the Prince's displeasure, but for conscience sake, *non solum propter iram sed propter conscientiam.*

CHAP. VI

That this Question of Imposition may be examined and decided as well by the rules of the Laws before mentioned, as by the rules of our Municipall Laws or Common Law of England.

FORASMUCH as the general Law of Nations which is and ought to be Law in all kingdoms, and the Law Merchant is also a branch of that Law, and likewise the Imperiall or Roman Law, have been ever admitted, had, received, by the Kings and people of England, in causes concerning Merchants and Merchandizes, so are become the Law of the Land in those cases; why should not this Question of Impositions be examined and decided by the rules of those Laws so far forth as the same doth concern Merchants & Merchandizes, as well as by the rules of our Customary or Common Law of England, especially because the rules of those other Laws are well known to the other Nations, with whom we have commerce, and to whom and from whom all Merchandizes are transported; whereas the rules of our own Municipall Laws are only known within our Islands; and if this Question may be decided either by the Laws of Nations, or by the Law Merchant which is but a member thereof, or by the Roman Civil Law, we find this point clearly and absolutely determind, and overruled by the rules of those Lawes, viz. That all absolute Kings and Princes may set Impositions upon Merchandizes, by their Prerogatives, and thereupon we may conclude, that since one Monarch hath as much power as another, as *Fortescue* in his Book *de Laudibus legum Angliæ*, affirmeth, the K. of England, as well as any other King, as

the Emperor himself, *cum ipse omnes libertates habet in regno suo duas imperator vindicat in imperio*, As King William Rufus told the Arch Bishop Anselm, may by vertue of his Royal Prerogative annexed to his Crown, and inherent to his scepter, lay impositions upon Merchandizes exported or imported into any of his Kingdoms or Dominions.

CHAP. VII.

Of the King's Prerogatives in general, and that the same do consist in certain speciall points or cases reserved to the absolute power of the Crown ; when the Positive Law was first established, and that the Canon Law of England doth acknowledge and submit it self to those Prerogatives.

BY the Law of Nature all things were cōmon, and all persons equal ; there was neither *Meum* nor *Tuum*, there was neither King nor Subject ; then came in the Law of Nations, which did limit the Law of Nature, and brought in property, which brought in community of things, which brought in Kings and Rulers, which took away equality of persons ; for property caused Contracts, Trade, and Traffique, which could not be ministered without a King or Magistrate ; so as the first and principal cause of making Kings, was to maintain property and Contracts, and Traffique, and Commerce amongst men. Hereupon by the same Law of Nations, Tributes and Customes became due to the King or Prince to maintain him in his place of Government, *quasi Ministerii sui stipendia*, saith the School-man, *Deo Minister est tibi in bonum ideo & tributa potestas*, saith Saint Paul, and all these things, namely Property and Contract, and Kings,

and Customes, were before any positive Law was made; then came the positive Law, and limited the Law of Nations, whereas by the Law of Nations the King had an absolute and unlimited power in all matters whatsoever. By the positive Law the King himself was pleased to limit and stint his absolute power, and to tie himself to the ordinary rules of the Law, in common and ordinary cases, worthily and princely, according to the Roman Emperour, *Dignissimum Principe Rex se allegatum legibus confiteri*, retaining and reserving notwithstanding in many points that absolute and unlimited power which was given unto him by the Law of Nations, and in these cases or points, the King's Prerogatives do consist; so as the King's Prerogatives were not granted unto him by the people, but reserved by himself to himself, when the positive Law was first established; and the King doth exercise a double power, *viz.* an absolute power, or *Merum Imperium*, when he doth use Prerogatives onely, which is not bound by the positive Law; and an ordinary power of Jurisdiction, which doth co-operate with the Law, and whereby he doth minister Justice to the people, according to the prescript rule of the positive Law; as for example, the King doth not condemn all Malefactors, but by the rule of the positive Law; but when the Malefactor is condemned by the Law, he giveth him a pardon by his absolute Prerogative.

Again, the King doth punish the breach of the Peace within the Land, by the ordinary course of the Common Law, but he doth make War and Peace with Forreign Nations, *Quod pertinet ad liberum jus gladii*, as a Doctor speaketh, by that absolute

and unlimited power, which the Law of Nations hath given unto him.

Again, the King doth establish the Standard of Money by vertue of his Prerogative only; for the Common Law doth give no rule touching the matter, or form, or value thereof; but when those Monies are dispersed into the hands of the Subjects, the same do become subject in respect of the property thereof, to the ordinary rules of the Common Law.

Again, the right of Free-hold and all Inheritance, and all Contracts reall and personall, arising within the Land, are left to be decided by the positive Law of the Land; but the Government and ordering of Traffique, Trade, and Commerce, both within the Land and without, doth rest in the Crown as a principall Prerogative, wherein the King is like to *Primum mobile*, which carrieth about all the inferiour Spheres in his superiour Course, and yet doth suffer all the Planets underneath him to finish all their divers and particular courses; or rather he doth imitate the Divine Majesty, which in the Government of the world doth suffer things for the most part to passe according to the order and course of Nature, yet many times doth shew his extraordinary power in working of miracles above Nature.

And truly, as the King doth suffer the customary Law of England to have her course on the one side, so doth the same Law yeeld, submit, and give way to the King's Prerogative over the other; and therefore in the 1 Hen. 7. fol. 23. there is a rule, That every Custome is void in Law *quæ exaltat in prærogativum Regis*, which is an argument, that the King's Prerogative is more ancient than the

customary Law of the Realm ; besides, the power of the King's Prerogative above the Common Law doth appear in this, That whereas all privileges do flow, and are derived from the King's Prerogative, and every privilege in one point or other *privat communem legem*, yet the Common Law doth admit and allow of privileges granted by vertue of the King's Prerogative.

CHAP. VIII.

Of the King's Prerogative in the ordering and governing of all Trade and Traffique in Corporations, Markets, and Fairs within the Land, and the Common Law doth acknowledge this Prerogative, and submit it self there unto.

FIRST, it is manifest that all Corporations of Cities and Boroughs within the Land, were chiefly instituted for Trade and Commerce, and not by the rule of Common Law ; no such Corporation can be made but by the King's Charter ; for though there have been some Corporations which have been time out of mind, yet the Law presumes that the same at first had their beginnings by the Grant of the King ; besides, we find in divers ancient Charters made unto those Corporations, a power granted unto the King to take *de omnibus rebus venalibus* within their Liberties, certain sums of Money, viz. *de libra piperis*, so much, *de libra zinziberis*, so much, *de quolibet panno*, &c. for murage, or towards the reparation of their Walls ; which is nothing else but an Imposition laid by the King's Charter to maintain those Cities and Boroughs wherein Trade and Traffique is maintained. Wee find such a Charter granted to Nottingham, 3 Edw. 1. *pat. m.*

21. *in Arch. turris* London. The like is granted to Cloneniell, [= Clonmell] and to some other Towns, in Ireland. *F. N. 170. B.* We find a Patent granted to a Burrough in England, to take for five years a certain sum of Money of every Passenger, toward the paving of the same Town.

Again, no Fair or Market may bee holden within the Realm, neither can a multitude of Subjects assemble themselves together to that end, without a speciall Warrant or Grant of the King; and when a Subject hath a Grant of a Fair, he hath a Court of Py-powder incident thereunto, wherein the proceeding is in Summary & *de plano* from hour to hour, as in the Court of Merchants; and for the Government of all Fairs and Markets, especially touching Weights and Measures, the Standard whereof was first established by the King's Ordinance, to whom the establishing of the Standard Monies, which is *mensura publica omnium rerum commutabilium*, is also reserved as a speciall Commodity.

Besides, in every Fair and Market where things are bought by retail, for the necessary use of the Buyer, and not to sell the same again as Merchandizes in another Market,—for that is regrating and unlawfull, by the rule of the Common Law,—there is a Toll taken, which is nothing else but an Imposition laid upon the Buyer, and that that Toll was originally imposed by the King's Prerogative, it is manifest in this, that the ancient Tenants of the Crown, namely the Tenants in ancient Demeasne, are discharged of Toll in all Markets and Fairs; and that the King by Charter hath discharged divers other persons of Toll, as appeareth in the Register of Writs, and *Fitz. Na.*

Brevium, where we find divers Writs *essend quiet de Theolneo*. But this discharge of Toll is onely for things bought for necessary use of the Buyer, and for Merchandizes; for the Tenants in ancient Demeasne are discharged of Toll, for such things only as are for their provisions, or manurance of their lands, and in the Writ which dischargeth the goods of Ecclesiasticall persons of this Toll, there is this clause, *dummodo non faciat Merchandizas de iisdem*, as is before declared.

Lastly, the King's Prerogative in the Ordering and Government of Trade within the Realm, doth appear in that notable Charter granted to the Abbot of Westminster, recited in the Register of Writs, fol. 107. wherein the King doth grant to the Abbot and his Successors, to hold a Fair at Westminster for thirty two dayes together, with a prohibition that no man should buy or sell within seven miles of that Fair, during that time.

CHAP. IX.

That the King hath another Prerogative in the Government in the Trade of Merchandizes crossing the Seas, differing from the Prerogative which he useth and ordereth in Trade and Traffique in Markets and Fairs within the Land, and of the difference between Custome and Toll by the rules of the Common Law.

TOUCHING Merchandizes crossing the Seas outward and inward, the same are of another quality, and the Law hath another consideration thereof, than it hath of such things as are bought and sold in Fairs and Markets within the Land, as is before expressed; and therefore the duties pay-

able upon the exportation and importation of Merchandize have another name, being called Customes, and not Toll, and are also paid in another manner, for Customes must be paid before the Merchandizes be discharged and brought to Land ; whereas toll is not payable but for goods brought into the Fair or Market.

Again, Customes must be paid whether the Merchandizes be sold or not, but Toll is not due but for goods bought and sold in the Market.

Again, Custom is alwayes paid by the Merchant, who selleth or intendeth to sell his Merchandizes in grosse ; but Toll is ever paid by the party who buyeth some Commodity for his proper use and provision by retail.

Lastly, if Customes be not paid or agreed for before the Merchandize be discharged and brought to Land, the Merchandizes are *ipso facto*, forfeited, and may presently be seized to the use of the King ; but if Toll be not paid, the thing sold is not forfeited, only it may be distrained and detained till the Toll bee paid ; or an Action upon the Case may be brought for the Toll. These differences between Customes and Toll do apparently prove that Merchandizes for which Customes are paid, do differ from other goods sold in the Markets and Fairs, for which Toll is taken, and that the Trade of Merchandizes crossing the Seas, and the Trade that is used in Markets and Fairs, are ordered by different Prerogatives ; and as the Tolls of severall kinds which are taken in Markets, Fairs, and Towns Corporate, were first imposed by vertue of that Prerogative, whereby the King ordereth all Trade within the Land ; so by vertue of that other Prerogative whereby the King governeth the trade

of Merchandizes crossing the Seas, the Crown of England, ever since the first institution of the Monarchy, hath from time to time raised and received out of Merchandizes, Customes, and Impositions, of divers Nature and Natures, according to the diversities of Merchandizes exported and imported, and the divers occasions and necessities of the comercion.

CHAP. X.

Of the Ancient duty called Custome, payable for our principall Commodities exported, and that it was originally an Imposition.

THE ancient duties payable for Merchandizes, were but of two kinds, and known by two names, Customes and Prizes; Customes were paid for home-bred and native commodities exported, and Prizes were taken out of Foreign Commodities imported.

The Natives Commodities out of which Custome was paid, were Wooll, Wooll-fells, and Leather, and this Custome did consist of certain rates or sums of Mony, imposed by the King upon those Merchandizes exported, which rates were raised and reduced higher or lower, from time to time, as occasion did arise; for although in the time of King Edw. 1. the Customes payable for those Commodities were reduced to this certainty, viz. to a demi mark for every Sack of Wooll, a demi mark for every three hundred Wooll-fells, and a mark for every last of leather, which we call now the great and ancient Custome, *ab initio non fuit sic*, these were not the rates from the beginning, for not long before that time there was a greater and more ancient Custome, paid for the exportation of those

Commodities, Britanni (saith Strabo) *vectigalia tollebant gravia earum rerum quas brevi tractu in Galliam importabant*; this was *Magna Custuma* in the time of the Britians; and though the certain rates thereof doth not appear, yet because the same were *gravia vectigalia* in those dayes, we may easily beleieve that Custume to have been greater than the demi mark for a Sack of Wooll.

Again, the Statute of *Magna Charta*, which was as ancient as King John, speaketh of ancient Customs payable for Merchandizes, and the Book of 29 Edw. 3. maketh mention of ancient Customes granted to King John, in the Town of Southampton, which doubtlesse were other Customes than that of the demi mark, &c. for that in the Record of the Tower, 3 Edw. 1. Rot. fin. 24. & Rot. Patent of the same year, m. 9. the demi mark which was first established by the King's Letters Patents, is called *Nova Custuma*, and this was a diminution of the ancient Custume, saith the Book of 30 H. 8. Dyer 43.

Again, when the same King Edw. 1. had by his Writ onely, without Act of Parliament, established the Custome of the demi mark, &c. in Ireland, in all the Customers' Accounts, which are found in the Pipe-Rolls, in the time of Edw. I. Edw. 2. Edw. 3. in that Realm, it is also called *Nova Custuma*, which importeth as much as a new Imposition, for Imposition is a new name, and hath been of use but of late years, whereas every new charge laid upon Merchandizes in ancient times, was called *Nova Custuma*, as the Lord chief Baron Fleming observed in his Argument in Bates' Case of Currans, in the Exchequer of England;*

* Bates case de Currans in Socio. per Fleming chief Baron.

but because this Custome of a demi mark was a reducement made by King Edw. I. of the great and ancient Custome to that proportion which was then thought reasonable (as after upon sundry Petitions of the Commons, was allowed by the succeeding Princes) it obtained in tract of time, the name of the great and ancient Custome; this Custome of demi mark was not granted to the King by Parliament, but reduced to that rate by the King, by the prayer of the Cōmons, as is expressed in the Record of 3 Edw. I. *fin. memb.* 24. for albeit the Charter for confirmation of *Magna Charta*, made in 25 Edw. I. doth recite, That the demi mark was granted by the Cominaltie, yet is there no Act of P. printed or recorded, wherein that grant of the Cominaltie doth appear, neither can it stand with the rule of reason that the demi mark being a diminution of the ancient Custome should proceed from the grant of the Cominalty to the King, for the King would never have accepted of such a grant as did diminish his Revenue, neither had it been thank-worthy or acceptable, and therefore the King having a Negative voice, would never have given his assent to such a grant in Parliament; but it is to be presumed that this diminution of the ancient Custome was made in Parliament, and not by Parliament, and that by prayer of the Commons, as the Record of 3 Edw. I. *Rot. fin. memb.* 24. testifieth, the King was then well pleased for that time to draw down the ancient Custome to that rate, and the people did willingly yeeld and consent to the payment thereof; and this I take to be the true interpretation of the Charter or Statute made in 25 Edw. I. And therefore because we find no Act of Parlia-

ment whereby the people did originally grant the great and ancient Customes to the King, and because we find it was uncertain and subject to diminution and alteration, we may conclude, that it was but an imposition laid by the King from time to time by vertue of his Prerogative, without any grant from the Cominalty of the Realm who can make no grant but by Act of Parliament; and in truth it were absurd to affirme, that the great and ancient Custome imposed upon Native commodities of the Kingdom was first granted by Act of Parliament; since it cannot be imagined that ever those commodities did passe out of the Kingdom, without Custome, being equal in time with the first Scepter; and since the Scepter was established many hundred years before the people were called to be in Parliament; besides, the very name of Custome doth note and argue that it began before any Act of Parliament was made, for that it signifieth a duty payable or accustomable to be paid time out of mind, which in presumption of Law, is before any Record; wherefore the rules in the Lord Dyer's Book are good Law, *viz.* The King hath an Estate of Inheritance in the Custome payable for Merchandizes, as being a Prerogative annexed to his Crown. And again, 30 Hen. 8. 43. Custome is an Inheritance in the King by the Common Law, and not given by any Statute.

CHAP XI.

Of the ancient duties called Prizes, taken out of Forreign goods imported, except Wines, and the petty-Customes of three pence of the pound were accepted by King Edw. 1. in lieu of Prizes.

FOR the Foreign commodities which are brought

into England, our Kings in ancient times did not take any Rates, or Customes, or Sums of Money, but took such part of the severall commodities in specie as they thought fit for their proper use, paying for that they took a price as themselves did likewise think fit and reasonable, which was called the King's price; this Prerogative is preved by the rule of the Imperiall Law, *Rex non recognoscens superiorem* protest è India in propria causa, and also by the rule which is given 31 Edw. 3. 60. where the Bishop of Norwich having forfeited to the King thirty Talents of Beasants of Gold, because the quantity and value thereof was uncertain, it was adjudged that the King's House should set down of what quantity and value every Talent should be, and that the same should be paid accordingly; and by the same Prerogative, whensoever any Subject is to pay a Fine or Ransome unto the King for a contempt, The King himself doth limit and set the Fine or Ransome at his own will or pleasure.

The Forreign commodities thus taken by the King in Spain at his own price, were called Prizes, but because these prizes were many times grievances to the Merchants, and brought little or nothing to the King's Coffers, That prudent Prince Edw. I. by that famous Charter called *Charta Mercatoria*, made in the 31 year of his reign, did remit unto all Merchant Strangers their prizes, and did grant *quod de cætero super mercimonia Merchandizas vel bona ipsorum per ipsum Regem vel Ministros suos nullos nulla appretiatio vel estimatio apponeretur, & quod nulla prisæ vel arrestatio ratione prisæ inde fieret, &c.* and the Charter doth further recite, That for the remission

of these prizes the Merchant Strangers did grant unto the King three pence upon the pound, now called the petty-custome, out of all Foreign Merchandizes imported, except Wines; and for our Native commodities exported, they would pay for every Sack of Wooll four pence, and for every three hundred Wooll-fells six shillings and four pence, and for every last of Leather a demi mark, over and above the duties payable by Denizens for the same commodities; which grant being made by the Merchants of every Nation, not being incorporated and made a body politick, is in respect of them of no force of the rule of the common Law, until the King's charter made it good and maintained it, untill it was confirmed by Parliament 27 Edw. 3. which was fifty years after the date of the Charter, upon the matter. These duties payable by Merchant Strangers, were onely Impositions raised and established by the King's charter, which Charter being made in England, was afterwards established, exemplified under the Great Seal of England, and transmitted into Ireland, with a special Writ directed to the Officers of the Customes there, to levy three pence of the pound, and other duties mentioned in that Charter, as appeareth in the Red Book of the Exchequer there; by vertue of which Writ onely, without Act of parliament, the three pence of the pound and other duties were levied and paid to the Crown in Ireland.

CHAP. XII.

Of the ancient Customes payable for Wines, called Prizage and Butlerage.

THE most ancient Custome payable for Wines is Prizage, which is not any sum of Moneý, but

two Tunns of Wine in specie, out of every Ship freighted with twenty Tunn, the one to be taken before the Mast, and the other behind the Mast of the Ship; and the price which the King himself did limit to pay, was twenty shillings onely, for every Tun, as appeareth by an ancient Record of 52 Hen. 3. whereby we may conjecture, what easie rates the King gave for the prizes of other Merchandizes. This Custome of Prizage was meerly an Imposition, for it could not be granted by the Merchants of Forreign Nations, being no body politique, as is before declared; neither is there any Act of Parliament whereby our own Merchants did ever grant it unto the Crown.

This duty of Prizage was remitted unto the Stranger, by the Charter of 31 Edw. 1. before mentioned, and in lieu thereof, by vertue of the same Charter, the King before mentioned receiveth two shillings for every Tun of Wine brought in by Strangers, which we now call *Butlerage*; but *Prizage* is paid in Specie by all our own Merchants at this day, the Citizens of London only excepted, who having remission of Prizage by a special charge, were charged with a new Imposition called *Gauge*, viz. *de quolibet dolio 1d. de vinis venientibus* London. which was accounted Forreign, *Magno Rot. An. 1* Edw. 1. in the Office of the Pipe at Westminster. The last of those Impositions, which by the continuance have gotten the name of Custome, was laid and approved, and are now maintained by the Common Law of England, as the lawfull and ancient Inheritance of the Crown.

CHAP. XIII.

Of the amcient Officers which our Kings have created

by vertue of their Prerogatives, to search and oversee all sorts of Merchandizes, and to collect the duties payable for the same.

AS our ancient Kings by vertue of their Prerogative without Parliament, have laid the Customes or Impositions before expressed, upon all sorts of Merchandizes exported and imported; so by the same Prerogative have they ordained severall sorts of Officers to search and over-see those Merchandizes on which they had laid those Impositions, namely the Gauger of Wines; a high Officer, [who] is as ancient as the Imposition of the Gauge it self before mentioned; the Alneger of the cloths which is more ancient than any Act of Parliament that makes mention of the cloths; for there is a Record of 14 Edw. 2. in *Archivis turre* which speaketh of the Alneger, the Packer of Woolls, the Garbellor of spices; beside the Officer of the Customes, viz. the Customer Comtroller and Searcher; all which Officers have ever taken Fees of Merchants, both Denizens and Aliens, not by grant of the Merchants or Act of Parliament, but by vertue of their severall Patents granted from the King.

CHAP. XIV.

Of other Impositions, besides the ancient Customes before mentioned, laid upon Merchandizes, by severall Kings and Queens, since the Conquest; some of which Impositions have been discontinued or remitted, and some of them are continued and paid at this day; and first of the Imposition set by King Edw. I. over and besides the Customes spoken of before.

IT appeareth in the Record of the Exchequer of England, That in 16 Edw. I. an Imposition of four shillings was laid upon every Tun of Wine brought into England, from certain Towns in Gascogine and Spain, and at this day answered and accompted for duty, for the space of ten years, untill the 26 Edw. I. when it was remitted but during the King's pleasure only; it appeareth likewise 25 Edw. I. by the Charter of the confirmation then made of the Great Charter, that King Edw. I. had for divers years before, set and laid an Imposition of fourty shillings upon every Sack of Wooll exported, which *ad instantiam Communitatis* he was pleased to remit; which remittall was of meer Grace, upon the Petition of the Commons, after that Imposition had been laid many years before; and it is to be noted, that this Imposition of fourty shillings upon a Sack of Wooll, was taken and levied above twenty years together, after the new Imposition of the demi mark upon a Sack of Wooll, which was set and established; for that begun in 3 Edw. I. and this Imposition of fourty shillings continued till 25 Edw. I. which is a strong argument that the first establishment of the demi mark, was not by a binding Act of Parliament, with a Negative voice, that no other duties should be taken for those Merchandizes, as was surmized, but was only a mitigation or reducement of a greater Custome paid before, which was done of meer Grace, upon some reason of State at that time.

CHAP. XV.

Of the Imposition set and taken by King Edward the second.

KING Edward the second, in the beginning of his reign, did as well take the ancient as the new Custome upon Wooll, Wooll-fells, and Leather ; which ancient Custom must needs be intended an ancient Imposition over and besides the demi-mark, which was then called the new Custome ; and this appeareth by a Record in the Tower, 3 *Ed. 2. Claus. memb. 16.* where the King directeth his Writ, *collectoribus suis tam antiquæ quam novæ customæ lanarum pellium & corriorum*, and requireth them to pay certain Debts of his Father's, King Edward I. out of their old and new Customes, and a hundred thousand pound *pro damnis occasione retardationis solutionis debitis, &c.* and howbeit afterwards, he being a weak Prince and misguided by ill Counsell, and over-ruled by his unruly Barons, was driven first to suspend the payments of his Customes of three pence the pound, and other duties contained in *Charta Mercatoria*, during pleasure only, as appeareth by his Writs of *Supersedeas*, directed to the Collectors of his Customes, 3 *E. 2. Claus. memb. 16.* and after that by an Ordinance made 5 *Edw. 2.* utterly to repeal that Charter, and to abolish all other Impositions raised or levied since the coronation of his Father, *Ed. I.* except the customes of the demi-mark ; notwithstanding after that, again *Anno. 11.* of his reign, when he wanted Money for his Expedition into Scotland, *exquirentes vias* saith he in his Writ to the collectors of his customes at London, *Rot. fin. memb. 12. in Archivis turris, quibus possemus pecuniam habere commodius & decentius, tandem de consilio & advisamento quorundam mercatorum inveniemus subscriptum*, which was, that he should receive by way of loan forsooth (which never was

repaid) a greater increase of custom upon all merchandizes imported and exported, for it is expressed in the Writ, that *præter incrementum de lanis coriis & pellibus lanutis*, which was a third part more than the demi-mark, viz. twenty shillings for every Noble; the King was to receive for every coloured cloth worth three pound sterling, a noble; for every other cloath worth fourty shillings, four shillings; for every peece of Scarlet, a mark; for every Tun of Wine, five shillings; for all Forreign commodities called *Averdepois*, two shillings the pound; all which sums of Mony he commandeth the Collectors of his customes to collect to his use upon their Merchandizes; which levy or collection, though it bear the name of a loan, being not made by authority of Parliament, nor with the consent of the whole cominalty, but taken up by the King's Writ onely, was nothing else but an Imposition laid upon Merchandizes by the King's Prerogative.

CHAP. XVI.

Of the Impositions laid and levied upon Merchandizes, by King Edward 3.

KING Edward the third reigned a full Jubilee of years, for he dyed in the fiftieth year of his reign; and during all this time, as there lay upon him a continuall charge for the continuance of his Wars, so was he continually supplied with his customs and Impositions which he had laid upon Merchandizes; whereof he was so great a husband, and by reason of his good husbandry spent such huge sums of Money, as there went a report in those dayes, that *Raimundus Lullius* the famous Alchemist, did make that *Elixer* for him, whereas

his improving of those duties which were paid for Merchandizes, was the true Philosopher's Stone, which did enrich him, and enable him to spend so many Millions in his Wars in France.

In the first year of his reign, by his writ only, without Act of Parliament, he gave new life to *Charta Mercatoria*, made by Edw. I. and repealed by Edw. II. or rather by unruly Barons, for the words of the Writ are, That the customes and duties payable by the Charter, *prætextu ordinationum per quosdam magnates in regno nostro factos, ad tempus aliquod cessarunt, & jam adnullatis dicti's ordinationibus colligi debent & levare, sicut tempore dicti Avi nostri, &c.* 1 Edw. I. Rot. fin. memb. 39. in *Archivis turris*.

Afterwards the Records of this King's time do plentifully declare, That he by vertue of his Prerogative, without Act of Parliament, laid many great Impositions, and raised extraordinary profit upon Merchandizes. Though not alwayes after one manner, yet all the means he used may be reduced unto three kinds.

Sometimes he did impose certain rates or sums of Money upon Merchandizes, at fourty shillings upon a Sack of Wooll, with a ratable proportion upon other commodities, for levying whereof hee only sent out his Writs to the Collectors of his Customes in every Port ; and this kind of Imposition being of the nature of the Impositions now in question, was more usuall and frequent than any other in this King's reign, as appeareth by sundry Records in the Exchequer, and in the Tower of London, 17 E. 3. Rot. 308. in *Sccio Angliæ* 21 E. 3. Rot. Parliament. numb. 11. in *Arch. turris*, 24 E. 3. Rot. 12. *Sccio Angliæ*. 25 E. 3. Rot. Parliament.

11, 22. in *Arch. turris*. 27 E. 3. *Rot.* 7 in *Seccio Angliæ*. 30 E. 3 *Rot.* 10 *Seccio Angliæ*. 38 E. 3. *Rot. Parliament.* numb. 26. in *Arch. turris*. 40 E. 3. *Rot.* 7. *Seccio Angliæ*. 50 E. 3. *Rot. Parliament.* numb. 163. in *Arch. turris*.

At other times he sent out Commissions to take up great quantities of Wooll and other commodities, at a low price, set by himself, and transported the same beyond the Seas, where he made the best profit thereof, for payment of the wages of his Army there, as appeareth by a speciall Record in the Tower. 12 E. 3. *Rot. Almanicæ pars* 1. numb. 3. in *dorso*. These taking prizes of English Merchandizes, are the first I find in any Record (for the King's provision of Household, is of another nature.) But the King took these Woolls in point of Prerogative, as his Predecessors were wont to take prizes of all Foreign commodities, untill King E. I. did remit all prizes to Merchant Strangers, by *Charta Mercatoria*, as is before expressed; and also such of English Merchants as would pay the customes restrained by that Charter, were offered the like immunitiion from prizes: 31 Ed. III. *Rot. Parliament*, numb. 24. But our English Merchants refused the benefit of that Charter, and therefore the King it seemeth was at liberty to take prizes of them as well as Strangers.

The King did many times shut up all the Ports, and stop all Trade, and then granted licences to all particular persons to transport Wool and other commodities; for which licences he took fourty shillings, sometimes fifty shillings for a Sack of Wool, and the like rate for other Merchandizes; and this is manifest by these Records, 13 Ed. III.

Rot. 2. in Scio Angliæ, 14 Ed. III. Rot. Parliament. in Arch. Turris.

Thus did this warlike and politique Prince, King Edw. III. by his Prerogative, without Act of Parliament, lay sundry Impositions and charges upon all sorts of Merchandizes; and although upon Petition of his Subjects in Parliament, when they granted him other Aids and Subsidies of greater value than these his Impositions, he did many times remit and release those Impositions, yet did he oftentimes renew the same, or impose the like again, when the Aide or Subsidy granted in recompence was spent, as shall be shew'd more particularly when I com to answer the Objections which have been against His Majestie's rightfull prerogative, in laying Impositions upon Merchandizes.

- CHAP. XVII.

Of the Profits raised unto the Crown out of Merchandizes during the reigns of several Kings who succeeded K. Edw. III. untill the reign of Queen Mary.

TRUE it is, that during the reign of these Princes, we finde no Impositions directly set upon Merchandizes by their absolute power or prerogative; but they did not forbear to lay Impositions directly, for that they wanted right so to doe, or because they doubted of their right in that behalf; for they well knew they had the same right, the same prerogative, and absolute power that their Predecessors had; but because they found other means to make other profit upon transporting of Merchandizes, and that in another manner, and in so high measure, as the trade of Merchandizes in

those daies could hardly bear any greater charge, without danger of overthrowing all Trade and Commerce: and therefore those Princes did in their wisdoms forbear to lay any further Impositions by their prerogatives: For these Kings who reigned after King Edw. III. who conquered Callis in France, and before Queen Mary lost Callis, had two principal waies and meanes to raise extraordinary profits upon Merchandizes, but proceeding from one cause, namely, from establishing the Staple at Callis; for King Edw. III. some few yeares before his death, did by his Prerogative in point of Government, without Act of Parliament, erect a Staple at his Town of Callis, and did ordain, and command, that all the Merchandizes exported out of England, Wales, and Ireland, by any Merchant Denison, or Alien, should presently be carried to the Staple at Callis, and to no other place beyond the Seas. This Staple at Callis was first settled and fixed there by an Ordinance which the King made by virtue of his Prerogative and absolute power in the Government of Trade and Commerce, without Act of Parliament: and if this Ordinance so made had been thought unlawful, and against the liberty of the subject, it would never have been approved and confirmed by the Judgements of so many Parliament in the times of Rich. II. Henry IV. Hen. V. and Edw. IV. Neither could there have been such heavy penalties layd by those Parliaments upon the transgressors of those Ordinances: Insomuch as in the time of King Henry the sixth, it was made Felony to Transport any Merchandizes to any part beyond the Seas but to Callis onely. Now the Staple of Callis being thns established, there did arise a

double profit to the Crown for transporting of Merchandizes over and above the ancient Customes and other Subsidies granted by Parliament.

First it came to pass, that the Customs and Subsidies for Merchandizes transported out of England, Wales, and Ireland, which before was single, and payd but once, that is, upon the outgate; after the establishing of the Staple at Callis, the duties for the same Merchandizes became double at the least, and for the most part treble, and were ever payd twice, and for the most part thrice; namely, once upon the outgate in the Ports of England, Wales, and Ireland; secondly, upon the ingate at Callis; and because all the commodities brought into Callis could not be vented into the main Land there, but the greatest part was to be exported again by Sea into higher or lower Germany, and other the North-East Countries, and some into Spain, and Italy, and the Ilands of the Levant, there did arise a third payment of Customes and Subsidies for so much of their commodities as were exported again out of Callis; by meanes whereof the Customes and Subsidies did amount to threescore thousand, or threescore and ten thousand pounds sterling, *per annum*, in the latter times of King Edw. III. and during the reign of Rich. II. Hen. IV. Henry V. and the beginning of the reign of Hen. VI. as appears by the Records of the Exchequer of England, which according to the valuation of Moneys at this day, the ounce of Silver being now raised from two shillings to five shillings, do make two hundred thousand pound sterling, *per annum*, which doth equal, or surmount all the Customes, Subsidies, and Impositions received at this day, though that

plenty of money, and price of all things, and consequently the expences of the Crown be exceedingly increased in these times.

And albeit the breach of Amity between the Crown of England and the Duke of Burgundy, who was the Lord of the Lower Germany, in the weak and unfortunate time of King Hen. VI. did cause a stop of Trade between us and that Country, into which the greatest part of our Staple wares, especially Wooll and Cloth were vented and uttered, and was likewise the cause of loss of all our Territories in France, except Callis, and all the Merchandizes whereof, whereby the Customes, and other duties payable for Merchandizes were in the time of that unhappy Prince withdrawn, and diminished to a low proportion; yet afterwards upon the Marriage of Margaret, sister to King E. IV. unto the Lord Duke of Burgundy, as that in honour of the English Wooll, which brought so much Gold into his Country, he instituted the Order of the Golden Fleece; and thereupon the Customes, Subsidies, and Impositions were raised again to so high a Revenue, as our Kings could not well, in policy, strain that strength of profit upon Merchandizes any higher.

Secondly, albeit the Staple established at Callis being first establised by an order made by the King's Prerogative and absolute power, was afterwards approved and confirmed by sundry Acts of Parliament, yet did the King by another Prerogative retain a power to dispence with that Ordinance, and those Acts of Parliament, and to give license to such, and so many Merchants as himself thought fit, to export any Merchandizes out of England, Wales, and Ireland, unto any other parts beyond

the Seas besides, *à non obstante* of the first Ordinance, and of the Statutes which did establish the Staple at Callis. By virtue of this Prerogative and power, the several Kings who had Callis in their possessions, did grant so many Licences to Merchants, as well Aliens as Denizens, to transport our Staple commodities immediately into other places without coming to Callis; for which Licences, whereof there are an incredible number found in the Records of England, the Merchants payd so dear for their commodities, especially the Genoeses, and the Venetians, and other Merchants of the Levant, as by the profits made of those Licences did amount to double the value of those Customes and Subsidies payable for exportation thereof; and thereof those Princes as they had the less need, so had they no reason at all to charge the Trade of Merchandizes with any other, or greater Impositions.

In these two points before expressed doe consist the principal cause why the Princes of England who succeeded King Edw. 3. who won Callis, untill the reign of Queen Mary, who lost Callis, did not directly use their Prerogative in setting any other Impositions upon Merchandizes above the ancient Customes and Subsidies granted by Parliament: For it is to be observed, that most part of those Princes who reigned after K. Edw. 3. and before Queen Mary, had the Subsidy of Tonnage and Poundage granted unto them by Parliament, which being added to the gain of the Staple of Callis, did augment not a little the profit layd upon Merchandizes. And may be a reason likewise why those Kings did forbear to lay any other Impositions by their Prerogative.

We may adde hereunto other reasons.

First, Rich. 2. was a *Minor*, and over-ruled by the great Princes of the Blood, who would not suffer him to use his Prerogative.

Secondly, that during the Wars of Lancaster and York there was no fit time to make use of that Prerogative, while both parties did strive to win the favour of the people.

Thirdly, that King Hen. VII. had much ado to settle himself in the quiet possession of the Kingdome after those troubles.

Fourthly, that King H. VIII. had such a mass of Treasure left him by his Father, and did so enrich himself by dissolution of Abbyes, as he had no need to make use of this Prerogative.

Fifthly, that K. E. VI. was also a *Minor*, and that his chiefest Council did more contend to advance their own houses than the King's profit.

CHAP. XVIII.

That Queen Mary did use her Prerogative in laying Impositions upon Merchandizes.

QUEEN Mary, in whose time the Town of Callis was lost, and consequently the benefit of the Staple at Callis was lost, did by her absolute power, as appeareth by the Report of the Lord Dyer, I Eliz. Dyer 165. raise an Imposition upon Clothes, viz. six shillings and eight pence upon every Cloth, over and above all Customes and Subsidies. True it is, that the Merchants petition'd to be disburthened of this Imposition, which was referred to the consideration of the Justices, and others; whereupon they had many assemblies and conference, as that Book reporteth: and albeit the Resolution of the Judges in that behalf be not

found in that book, it is to be presumed, That they adjudged the Imposition to be just and lawfull, because it was continued and answered during all the Reign of Queen Mary. This Queen Mary likewise by her Prerogative onely, layd an Imposition of four Marks upon every Tun of French Wines over and above the Prizage and Buttlerage, which during her life time was payd without contradiction.

CHAP. XIX.

That Queen Elizabeth also used her Prerogative in laying Impositions upon Merchandizes.

QUEEN Elizabeth also by virtue of the same Prerogative, did not only continue the Impositions layd by Queen Mary upon Cloths and French Wines, but did raise other Impositions of sundry sorts of Merchandizes by the same absolute power; namely, upon every Tun of sweet Wines, upon every Tun of Rhenish Wines, upon every Kental of Allom; which during the time of the prudent Princess were payd and received without question. Besides, the same Queen, upon complaint made unto her in the twelfth year of her Reign, That the State of Venice did impose one Duckett upon every hundred of Currans exported out of their Dominions by the Merchants of England, did by her Letters Patents, grant unto the English Merchants who traded into the Levant, That they only, and their Assigns, might bring Currans into England. The English Merchants having this privilege, did take five shillings and six pence upon every hundred waight of Currans brought into England by Strangers, which was duly payd, although it was taken by the Merchants by virtue

of their privilege only of *fortiori*; yet it ought to have been payd if it had been payable to the Queen her self, as the Lord Chief Baron Fleming did observe in his Argument of Bates's case of Currans in the Court of Exchequer in England.

CHAP. XX.

That our Sovereign Lord King James hath by virtue of the same Prerogative, without Act of Parliament, layd several Impositions upon Merchandizes.

HIS Majesty likewise when he came to be King of England, finding his Crown to be seized of this Prerogative, and finding withall the necessary charge of the Crown exceedingly to increase, did for the supportation thereof, not onely continue the Impositions layd by Queen Mary, and Queen Elizabeth, but also layd new Impositions upon sundry sorts of Merchandizes, over and above all Customes and Subsidies formerly due and payable for the same: and these are the Impositions now. The principal of these is twelve pence upon the pound, or a second poundage set upon Merchandizes as well exported as imported, by Letters Patents 8. July, in the sixth year of his Majestie's Reign; but how is it set and imposed? surely with such moderation, and limitations, and such receptations full of grace and favour, as no Monarch or State in the world did ever impart to their Subjects the like in the like case; for, besides other gracious clauses contained in the same Letters Patents, All commodities serving either for food, or sustenance of the King's people, or setting the poor on work, or for munition or defence of the Realm, or for maintainance of Navigation, or which especially

tends to the enriching of a Kingdome, are excepted and discharged by this Imposition.

As for the special Impositions which his Majesty hath set upon certain forreine commodities, as Currans, Log-wood, Tobacco, &c. As touching the first of these, the Imposition hath been adjudged lawful in the Court of Exchequer of England: and for the other commodities, they are of such nature, as no man ever made question but that the Impositions set upon them were lawful. Besides these Impositions layd in England, his Majesty by his Prerogative onely, since the beginning of his Reign, received the Impost of Wines in Ireland; and hath likewise, to make equality of Trade in that Realm, layd an Imposition of twelve pence on the pound of all other Merchandizes imported and exported out of the Ports of Dublin, Waterford, Drogheda, and Galway, the Citizens of which Cities and Townes are exempted and discharged of Poundage granted by Act of Parliament there; which Imposition was never impugned in Ireland, but hath since the setting thereof been levied and payd without contradiction. And thus wee see how long the Crown of England hath been seised of this Prerogative, in laying Impositions upon Merchandizes, and how the same hath been put in practice by the most prudent Princes since the Conquest.

CHAP. XXI.

The general reasons whereupon the Prerogative is granted.

ALTHOUGH it be a matter of difficulty, and doth savour withall of curiosity and presumption, to search a reason for every Prerogative that is

incident to the Crown; for *Sacrilegii est disputare de Principis facto*, saith the Imperial Law; and *Scrutator Majestatis opprimitur à gloria*, saith the Wise man: Yet the reasons whereupon this Prerogative is grounded are so many, and manifest, as it were not amiss to collect the principal of them, rather for the confirmation, than the satisfaction of such as have moved this question touching the lawfulness of Impositions layd by his Majesty upon Merehandizes.

First, the King is the Fountain of all Justice, and therefore the first reason is drawn from the King's charge in doing Justice, and procuring Justice to be done to Merchants. Not onely distributive Justice, wherein consisteth *Præmium* and *Pæna*, but cōmutative Justice is also derived from the king. Now his Majesty doth exercise commutative Justice chiefly in the ordering and government of Trade and Commerce, wherein hee is to doe Justice, or to procure Justice to be done to his Subjects, who do make contracts real and personal within the Land: But to his Merchants that trade and traffique with Forrein Nations, and to Strangers that trade and traffick with us, for the Administration of cōmutative Justice within the Land, the King receiveth sundry profits, which grew first by way of Imposition. A man cannot recover a Debt in the King's Court, but first he payeth the King a Fine for his first Process: Land cannot be conveyed by a Common Recovery but a Fine for the Original must be payed to the King. Neither can Land be passed from one to another by Fine in the King's Court, but the King's Silver must be payd, *pro licentia concordandi*. Adde hereunto the profit of the Seals in all the King's Courts, for all

manner of Writs: and yet the King in *Charta magna* did promise, *Nulli negabimus, nulli vendemus Justitian vel rectum*; but the King's taking of these, and the like Duties, is no breach of the great Charter, for that the same was imposed by the King long before the Charter was made and taken, *ut Ministerii sui stipendia*, as the Scholman speaketh; and withall to recompence the charge of the Crown in maintaining the Court of Justice: See *Bodin lib 6. de Repub. cap. 2.* where hee speaketh of the like profit made upon the Process in France: and shews that the antient Romans did the like: And the Emperour Caligula took the fortieth penny of that which was demanded in every several Civil Action. If then such profits be taken for the King in his Courts of Justice within the Land, towards the charge which he sustaineth in the maintenance of these Courts and the Offices thereof, which duties were at first limited and imposed by the King himself without any Act of Parliament; for who ever heard of an Act of Parliament whereby the same were granted? Is there not as good reason why the charge of the King in doing Justice, and procuring Justice to be done unto Merchants, whose residence and comerce is for the most part out of the Land, should be recompenced out of Merchandizes imported, and exported, not according to the will of the Merchant, and pleasure of the people, but proportionable according to the King's charge, which being best known to himself, it is most meet that the recompence should be limited by himself?

Touching the charge of the King in doing, and appointing Justice to be done to Merchants; Are not all Leagues, Truces, and Treaties of State with

Forrein Princes, wherein the Publique Trade and Commerce of Merchants are ever included, concluded, and made at the King's charge? Did not the King's Council of State, and high Court of Chancery give more speedy hearing to the causes of Merchants than to the causes of other Subjects? Doth not the King maintain a Court of Admiralty for deciding of Marine causes, which doe for the most part concern Merchants? Doth he not bear the charge of several Leger Ambassadors in Italy, in Spain, in France, in the Low Countries, in Turkie, whose principal Negotiation doth consist in procuring Justice to be done to our Merchants? And if our Merchants doe suffer wrong in any Forein Country by reason of any defective neglect in doing Justice there, doth not the King by his Prerogative grant them Letters of Mart, or Reprisal, that they may right themselves, which is a *species justi Belli*, as the Civilians call it? And if the injury done to the Merchants be multiplied and continued with a high hand, Is it not the King's Office to denounce and prosecute War against such a people as doth refuse to doe Justice unto his Merchants? For this cause the Romans began the first Punick War, saith Appian, and Cicero in his Oration *pro Lege Manlia*, affirmeth, *Populum Romanum sæpe Mercatoribus Injuria, suis tractata bella gessisse*. Briefly, the plenty of Money being greater in this Age than ever was there by reason of so many Millions of Gold and Silver brought from the Indies into Europe, and the price of all Merchandizes being withall greatly enhanced, and the charges and expences of Princes exceedingly encreased, is it meet or just that the King at this day should be stinted or bound to the old Demi-

mark onely for Native commodities? or the three pence of the pound for the Forein commodities which Edw. I. was content to accept of four hundred year since? or a single poundage onely? which in the time of King Edw. IV. was not sufficient to maintain the necessary charges of keeping the Sea, as the Acts of Parliament, 12 Edw. IV. cap. 5. which granteth that Subsidy to the King, reciteth all the King's charge in supporting the Trade of Merchants being unlimited, and infinite: and shall the duties payable for Merchandizes be stinted and restrained to such a proportion only as the Subject shall bee pleased to grant unto him? Assuredly if the King had not a Prerogative of his own absolute power without Act of Parliament, to increase the duties payable for Merchandizes at this day, a Merchant's Counting-house would be richer than the King's Exchequer; and the Subject who may live privately, and moderate his expences, and yet raise the Fines of his Coppyholds, and Rents of his Demeans without controlement, would be in better case than the King, who by reason of the Majesty of his Estate cannot abridge his charges, and yet should have no power of himself without leave of his Subjects to increase his Revenue.

Again, the King is not only at charge in doing of Justice to his Merchants at home, and in procuring Justice to bee done to them abroad, but he doth withall maintain a Royall Navy of Ships, the best, the fairest, the strongest in the world at this day, to protect all Merchants from spoyl and Piracy on the sea. In the maintainance of this Navy, the King doth expend more Treasure than the whole Revenue of some of his Predecessors did amount to.

And he doth not onely secure Merchants by Sea, but he gives them safe conduct by Land also, as appeareth by the great Charter: So as they may well give our King that title which Virgil gives to the King of Bees, *Ille operum custos*: And seeing Merchants are most likely resembled to those Industrious creatures, because they bring the hony to the King's Hives, to wit, to his Havens and Ports, where they, and their Merchandizes bee protected and reserved; why should they not imitate the Bees in observing their King, and in making him partaker of the fruit of their labours? Neither is it a new thing, or an invention of this Age, to lay Impositions upon Merchants for their Waftage and Protection at Sea; for Plinius tels us, *lib. 19. cap. 4. Merces prætiosæ ut ex India, Arabia, Ethiopia, tutò in Europam à Mercatoribus convehentur, necessariò classem parandam esse adversas Piraticas incursiones, inde maritimi exercitus habendi causa vectigal rubri maris institutum.*

A third reason [is] drawn from the Interest the King hath in the parts of the Kingdom, and the custody thereof, which giveth him power to shut and open the same at his pleasure.

Again, all the Ports of the Kingdome are the King's; not onely the Cinque-Ports, which have a special Warden appointed by the King, but the rest of the Ports are also his, and many of them bear a mark of the King's Inheritance in their Additions, as Linn Regis, Waymouth, Melcombe Regis, Pool Regis; for the King in *Custos totius Angliæ Regni*; as the four Seas are the Walls of the kingdom, so the Havens and Creeks are the Gates and Posterns of it. They are *Ostia*, they are *Janua Regni*; and we find two Ports in Italy

called by those names, the one at the mouth of Tiber, the other corruptly called Genoa, but the true name thereof is *Janua*. And as the Havens are *Janua Regni*, the King himself is *Janus*, and hath power to open and shut them at his pleasure.

Omnia sunt nostra clausa patentque manu, saith *Janus* in the Poet. And again, *Modo namque Patulchus idem & modo sacrificio Clusius ore vocor*.

The King of England hath ever had this Prerogative incident to his Crown, to shut and open the Ports when it pleased him, as appeareth by many Records, especially by the Parliament Rolls in the time of King Edw. III. wherein are found many Petitions that the Sea might be open, which during that King's time was often shut by virtue of his Prerogative only, and never fully opened again, but when the King layd an Imposition upon Merchandizes.

And this Prerogative of Custody of the Ports, and of shutting and opening the same, is reserved unto the Crown upon an excellent reason: For Trade and Commerce is not fit to be holden with all persons, neither are all things fit to be imported or exported: For such persons as are enemies to the Crown, and come to discover *Arcana Regni*; such persons as come to corrupt Religion, or the manners of the people; such persons as under colour of Merchandizes come to set up Monopolies, or a dry Exchange to drain or draw away our commodities or money out of the Kingdom; are not fit to enter in at the Gates of the Kingdome. And again, such commodities as the kingdom cannot spare, as Corn in time of dearth, and such as may advantage our Enemies and hurt us in time of Warre, as Horses, Armor, Gunpowder, &c. are not

fit to be exported out of the Realm: and Poysons, Heretical books, and other things which are apparently hurtfull to the people, are not to be imported; and therefore the Prerogative of opening and shutting the Ports is accompanied with another absolute power, of stoping and imbarring of Trade and Commerce, sometimes generally, sometimes between us and particular Nations, and sometimes for particular Merchandizes only; whereof there are many presidents and examples both in Records and Histories of our Nation, 2 Edw. 1. *Rot. Parliament. m.* 18. in *Archivis Turris*. 2 Edw. III. *Rot. fin. m.* 17. *ibid.* 10 Edw. III. *Chaunc. m.* 3. in *dorso ibid.* 17 Hen. 6. *Secio Anglice*, *Matthew Paris Hist. magna p.* 568. 10 Hen. 7. *Stow*. And this Prerogative of imbarring Trade, doth result out of the undoubted Prerogative which the King hath to make Peace and War with Forein Nations; for open War is no sooner denounced, but all Trade of Merchandize is stopt and imbarred between the Nations which are ingaged in the Warre, *durante bello inter Reges Christianos merces quascunque exportare vetamur ne Regni arcana scrutentur*, saith a Doctor of the Imperiall Law; whereupon wee make this Argument, That since the King hath absolute power to shut the Ports, and stop Trade, it standeth with as good reason that he shold have the like power to lay reasonable Impositions upon Merchandizes for opening of the Ports, and for giving of freedome of Trade again; he that may doe the more, may doe the lesse, *Non debet ei cui id quod majus est, id quod minus est non licere*, saith the Rule of the Law; hee that may prohibit Merchants not to Trade or passe, may dispence with that prohibi-

tion, and give them leave to go and Traffique *sub modo*.

Again, the King of England is *Dominus Maris*, which floweth about the Island, as divers ancient Books and Records do testifie, as *Fitz Avowry*, 192. 6 Rich. II. *protection* 46. *Rot. Scotiæ*. m. 16. in *Arch. Turris*. And he is Lord of the Sea, not only *quoad protectionem & jurisdictionem, sed quoad proprietatem*, and this is our Neptune's trident, for God gave unto man as well the Dominion of the Sea as of the Earth, where it is said, *Gen. 1. replete terram & subjicite eam, & dominamini piscibus maris, &c.* and in *Psal. 8. Omnia subjecit pedibus ejus, Pisces maris & quicquid perambulat semitas maris*.

And therefore Baldus affirmeth, *de jure Gentium distincta esse dominia in mare sicut in terra arida*, and again, *mare attribuitur terræ Circumstanti*. Hence it is, though there be but one Ocean, in respect whereof the whole Earth is *quasi insula*, saith Strabo, yet is there *Mare Gallicum, Sardicum, Creticum, Ægypticum, & oceanus Eritanicus, Germanicus, &c.* which particular names do note a propriety in the Princes and States, who are Lords of the Land adjoyning. Hence it is that our Common Law doth give unto our King all the land which is gained from the Sea, which Stampford in the Book of the King's Prerogative doth affirm to belong to the King, *de jure Gentium, quia Mare seu particula Maris est de Territorio illius Civitatis vel Regni cui magis appropinquat*, saith one learned Doctor; *Mare se extendit cum aquæ sint Mensurabiles*, saith another. Hence it is, that all navigable Rivers, as the River of Thames, and the River of Lee, and divers others, are called in our Books, the King's Streams, 19. Ass. p. 6. Dyer 117.

a. because such Rivers are arms of the Sea, so far as the Sea doth flow in them, 22. *Ass.* p 93; and lastly, hence it is, that by the Common Law, the King may prohibit all Subjects whatsoever to passe over the seas without his licence; and to that end in 22 Edw. IV. the King Commanded the Warden of the Cinque Ports, and the Bailifs of all other Ports of the Kingdom, that they should not suffer any Man, Ship, or Boat, to passe beyond the Seas, *quousque Rex illud mandaverit*, and the like Commandments were given, 4 Edw. III. 21 Edw. III. 16 Rich. II. 17 Hen. VI. If therefore the King hath such an absolute Interest in the Ports, and in the Sea, and in all Navigable Rivers wherein the King's Ports are situated for the main part, why should he not have the like absolute power to limit and prescribe unto Merchants what duties they shall pay, and upon what terms and conditions they shall passe to and fro upon the Seas, and come in and out of his Streams and Ports with their Ships and Merchandizes? *Podagium in Mari debet solvi sicut in terra si sit impositum per dominum Maris*, saith Baldus; and the rights belonging to the Lord of the Sea, saith another Doctor, are *Jus navigandi, jus piscandi, jus imponendi vectigalia pro utroque*.

Again, the Kings of England have the like Prerogative in the government of Trade and Commerce belonging to this Kingdome, as other Princes and States have within their Dominions. He must of necessity have the like absolute power as they all have to lay Impositions upon Merchandizes imported and exported, otherwise he cannot possibly hold the ballance of Trade upright, or preserve an equality of Traffique between his

own Subjects and the Subjects of Forein Princes, and consequently it will lye in the power of our Neighbours to drain and draw away all our wealth in a short time, or else to overthrow all Trade and Commerce between us and them at their pleasure, and we shall have no means to encounter or avoid the mischief; for their Princes, having sole power to impose, will have the sole making and managing of the Market between their subjects and us, and consequently may set what price they please upon all Merchandizes, enforcing us to sell our Commodities cheap, and buy their Commodities dear, onely by this advantage of laying Impositions.

And therefore the King of England must of necessity have the same absolute power to lay Impositions upon Merchandizes, as other Princes have, as well, *ut evitetur absurdum*, as to prevent the ruin of the Common-wealth, by the equall ballancing of Trade and Commerce between his Subjects and the Subjects of Forein Princes. Upon this reason when the Duke of Venice, in the time of Q. Eliz. as is before expressed, had laid an Imposition of one Ducket upon a 100*li.* weight of Currans carried out of his Dominions by any English Merchant, the Queen by a speciall Patent in the twelfth year of her Reign, did enable the Merchants which did Trade in the Levant to levie five shillings and six pence upon every 100*li.* weight of Currans brought into England by any Merchant Stranger. Upon the like reason, when in the time of King Hen. III. the Emperor and the French King had raised the valuation of their monies both so high, as there grew not only an inequality of Trade between their Subjects and the Subjects of England, but our monies standing

at their former values, were carried out of the Realm in great quantities; The King in the 24th year of his Reign granted a Commission unto Cardinall Woolsey to enhance the values of English monies likewise; by that means to set ballance of trade even again, and to keep our monies within the Realm.

Upon the same reason of State, when the King of Spain that now is, in the year 1614. had laid an Imposition of thirty upon the hundred on all Merchandizes imported and exported by Strangers; the French King Hen. IV. was quickly sensible of it, and did forthwith impose the like in his Kingdom; then it followed of necessity that other Nations should follow and imitate them, whereby it came to passe that Commerce of Merchants generally throughout Christendome, began to decay; which being perceived by these two great Princes, they agreed to take away those excessive Impositions, upon several Treaties between them and the Indians, and after between them and the English, and the Dutch.

Briefly we find examples in all ages, that whensoever by reason of Warre, or for any other cause, any Forein Prince gave the least impediment to Merchants in their Trade, our Princes gave the like entertainment to their Merchants again. This is declared in *Magna Charta*, cap. 30. where it is plainly expressed what entertainment the Merchants of all Nations should expect in England, *Habeant saluum & securum conductum* (saith the Charter) *Præterquam in tempore guerræ & si fuerint de terra contra nos guerrina*, then as our Merchants are used with them, so shall their Merchants be used with us, 46 Edw. III. The Countesse of

Flanders having arrested the goods of the English Merchants there, the King in recompence of their losses, granted unto them all the goods of the Flemings in England, wherof there is a notable Record mentioned before: 1 Edw. III. *pat. m.* 19. in *Arch. Turris*. There are many other examples of mutuall embarments of Trade between the Flemings and us, and also between us and the French men during our Wars with France, which I omit; I will recite onely one president in the 40 year of Queen Elizabeth, at which times the Merchants of the *Haunce* Towns having by sinister information procured the Emperour to banish our English Merchants out of the Empire; the Queen by her speciall Commission, did authorise the Mayor and Sheriffs of London to repair to the *Still-yard*, being the Hostell of the *Haunces*, to seize that House into her Majestie's hands, and there to give warning to the Merchants of the *Haunce* Towns to forbear Traffique with any of her Subjects in England, and to depart the Realm upon that very day, which was assigned to our Merchants[commanded] to depart out of the Empire.

Lastly, for the ordering and government of Trade among our own Merchants in Forein Countries and at home, our Kings by their Prerogatives have instituted divers Societies and Companies of Merchants, as the Company of Merchant-Adventurers, the Muscovia Company, the Turkie Company, the East India Company, &c all which are created, upholden, and ruled, by the King's Charter only; whereupon I may conclude, that the Kings of England having the same power in governing and ballancing Trade, as other Princes have, may justly execute the same

power, as well by laying Impositions upon Merchandizes, as by the other means which are before expressed.

CHAP. XXII.

Of the several Objections that are made against the King's Prerogative in laying Impositions upon Merchandizes, and the several Answers thereunto.

THE first Objection touching the property which all free Subjects have in their goods.

First, it is objected, that under a Royal Monarchy where the Prince doth govern by a positive Law, the Subjects have a property in their Goods, and inheritance in their Lands; *Ad Reges potestas omnium pertinet ad singulos proprietates*, So as the King hath no such Prerogative, say they, whereby he may take away the Lands or Goods of a Subject without his consent, unless it be in a case of Forfeiture.

And therefore though Samuel foretold the people when they desired a King, *Hoc erit Jus Regis, tollere agros vestros, & vineas, & oliveta, & dare servis suis*: Yet Ahab, though he were a wicked King, did not claim that Prerogative when he coveted Naboth's Vineyard, neither did he enter into it untill Naboth by false witnesses was condemned and stoned to death for blasphemy, and then he took it for a lawfull Escheat; but when the King doth lay an Imposition upon Merchandizes without the consent of the Merchants, and doth cause the Officers of his Customes to take and levie the same; it seems say they, they take away the goods of the Subject without his consent, and without cause of forfeiture, which is not warranted either by Law of Nations, which

brought in property, nor by the Law of the Land, which doth maintain property.

CHAP. XXIII.

The Answer to the first Objection.

TO this Objection we answer, That the King doth not take the Land or Goods of any without his consent. But here we must distinguish—there is a particular and expresse consent, and there is an implicit and general consent, when a man doth give his Goods, or surrender his Lands to the King by deed enrolled, or when in Parliament which representeth the body of the whole Realm, and wherein every man doth give his consent, either by himself, or his Deputy. A subsidy is granted to the King: there is an expresse consent; but when subjects who live under a Royall Monarchy, do submit themselves to the obedience of that Law of that Monarchy, whatsoever the Law doth give to that Monarch, the subjects who take the benefit of the Law in other things, and doe live under the protection of the Law, doe agree to that which the Law gives by an implicit and general consent; and therefore there are many cases where the King doth lawfully take the goods of a Subject without his particular and expresse consent, though the same be not forfeited for any crime or contempt of the Owner.

If a Theef do steal my goods and waive them, the King may lawfully take those goods without my particular consent; and without any fault or forfeiture of mine; but in regard I live under the Law, which giveth such wayves unto the King, he taketh not the same without my implicit consent; so if my Horse kill a man, the King may

lawfully take my Horse a Deodand without my fault or consent in particular ; but in that I have consented to the obedience of the Law which giveth all Deodands to the King, he taketh not my Horse without the implicit or generall consent of mine.

In the time of War the King doth take my House to build a Fort, or doth build a Bulwark upon my Land, he doth me no wrong, though he doth it without my consent ; for my implicit consent doth concur with it, for that I being a member of the Common-weal, cannot but consent to all Acts of necessity tending to the preservation of the Commonwealth.

So if the King doth grant me a Fair or Market, with a power to take a reasonable Toll ; If a man will buy any thing in my Fair or Market, I may take Toll of him, though he give no particular consent to the grant, because the Law whereunto every Subject doth give consent and obedience, doth warrant the taking of Toll in every Market and Fair granted by the King.

So it is in case of Impositions: the Law doth warrant the King's Prerogative to impose upon Merchandizes, as is before declared, and therefore though the Merchants give not their particular consents to the laying of these Impositions, yet in regard they live under the protection and obedience of the Law, which submits it self to this Prerogative, and allows and approves the same ; it cannot be said that the King doth take these Impositions of them without their implicit and generall consent.

CHAP. XXIV.

Of the second Objection touching the uncertainty and unbounded largenesse of this Prerogative.

THE second Objection is against the uncertainty and unlimited largenesse of this Prerogative; for in other cases they say, where the King taketh the goods of a Subject by his Prerogative, there is a certainty what he may take, as in the case of wayvs, he may take onely the goods wayved, and no more.

In case of Deodand, he may take only the thing that causeth the death of a man, and no more.

In case of wreck, he may take only the goods that are wreckt, and no more.

In case of Wardship of Land holden in Capite, the King may take the profits of the Land, till the Heir sues his Livery, and no longer.

In case where the King hath *Annum Diem & vastum*, hee may retain of the Lands of the Felon attainted, which are holden of other Lords for a year and a day, and no longer.

In all these cases there is a certainty what the King shall have, and how long he shall have it; but in case of Imposition, the quantity or rate thereof high or low, is left to the King's own will or pleasure; so as if he should be mis-led, as many Princes have been, with evill Counsell, he might with his Prerogative doe hurt to the Cōmon-wealth, by laying too heavy burthens upon his Subjects; for though hetherto his Majesty hath imposed upon Merchandizes only twelve pence on the pound over and above the ancient Custome and the Subsidies granted by Parliament, yet this Prerogative being unlimited, he may hereafter

(say they) set five shillings or ten shillings upon the pound, if it please him, and so undoe the Merchants, or discontinue and overthrow all Trade and Commerce.

CHAP. XXV.

The Answer to the second Objection.

TO this Objection the fittest answer is, That it is an undutifull Objection, and withall too busie, too bold, and too presumptuous; for it is an Objection against the wisdome of the King in point of Government, and against the bounty and goodnesse of the King towards his people. The Text of the Civil Law cited before, doth call it a kind of Sacrilege to dispute of Princes' Judgments or Actions; and for the Law of England, sure I am, that it trusteth the Wisdome and Judgement of the King alone in matter of greater importance than in laying of Impositions, or setting of rates upon merchandizes.

Is not the King's wisdome only trusted with the absolute power of making War and Peace with forein Nations, whereby hee may when hee pleaseth interrupt all Trade of Merchandizing? Is not the King alone trusted with the like power of making and decrying of monies, which is the onely *Medium* of all Traffique and Commerce? Is not he solely and without limitation trusted with the nomination and creation of all Judges and Magistrates, who are to give Judgement in cases concerning the Liberties, Lands, and Lives of all his Subjects? hath not he a sole and unlimited power to pardon all Malefactors, to dispence with all penal Laws, to distribute all Honours, to grant to whom he pleaseth Protections, Denizations, Exemptions, not

only from Juries, but from all other Services of the Common-wealth? and yet these Prerogatives if the same be not used with judgement and moderation, may prove prejudicial to the Common-wealth, as well as the laying of Impositions upon Merchandizes. Shall therefore any undutifull Subject make these conclusions? The King may have a continual Warre with Forein States and Princes, and so continually corrupt all courses of Merchandizes, Ergo, he shall lose his Prerogative of making War or Peace, when himself in wisdom shall think fit so to do. The King may decry all monies of Gold and Silver in Bullion, and establish a Standard of Copper or Leather; therefore he shall coyn no monies without the consent of the people. The King may if he please, break up all the Prisons, pardon all Offenders, and so give impunity to all Offenders; Ergo, he shall pardon no Malefactors by Act of Parliament. These are found absurd, or rather wicked conclusions; *à posse ad esse* is an absurd Argument, but *à posse & nolle nobile est*. The Law presumes the King to be so noble and so wise, that all Acts done by him, or in his Name during his Infancy, are of as good force in Law, as if the Law had bin done in his ripest years. The Law presumes the King to be most just in all his actions, and therefore it hath these rules; the Prerogative of the King can do no wrong, the King can commit no disseisin, the King can make no discontinuance, and the like. *Cor Regis in manu Domini*, saith Solomon, and therefore the Law presumeth, that God will ever direct him to that which is just. Is it not then too much curiosity to instruct where the Law trusteth, and too much presumption to presume against the

presumption of the Law, especially in the time of such a King who is the wisest, and justest, the most religious, and most gracious King that ever reigned in Europe? Can any man imagine that so great a Master in the Art of Government, the most prudent King of great Britain and Ireland, the two greatest Islands in this Hemisphere, and seated most commodiously for traffique; which all the World knowing that the duties paid unto him for Merchandizes, are the most certain, settled, and assured, and withall the best and richest part of his Revenues at this day; will lay heavier Impositions upon Merchandizes than they are able to bear, and so destroy all Trade and Commerce? When King Hen. VII. his most prudent Predecessor, did lend money to his Merchants to maintain Traffique, will he for a little extraordinary profit for the time present, pluck up at once the Root, and dry up the Fountain of this Revenue for the time to come? it is unprobable, it is incredible, it is impossible. But suppose that this is crediblen that the King should lay such heavy Impositions upon Merchandizes, as all Merchants should refuse to Traffique, who should lose most by that, the King or his people? assuredly hee should suffer an exceeding great losse in his Customes; but we that are of the Commons should save by it, having all things necessary for the Life of Man within the Land, which is.

Terra suis contenta bonis, non indiga mercis.

We should spare these vain expences which we now make upon Forein Commodities, namely Cloath of Gold, Cloath of Silver, Silks, Spices, Wines, and many other superfluous and unnecessary things, which doe nourish Pride, and Luxury,

Riot and Excesse amongst us; which corrupt our manners, and in the end will be the ruin of the Common-wealth. I may therefore conclude this point, That since the King hath power by his Prerogative to lay Impositions upon Merchandizes, he hath also a power coincident thereunto, to limit and rate the proportion and quantity thereof, according to his own wisdom and reasons of State, from time to time; for either the King must set down the rates, or the people, or the King and people both by Act of Parliament; but if the people will not assent or agree to a reasonable limitation thereof in Parliament, shall the King lose those Royal Duties which all other Kings do take by vertue of their Prerogative? it were most unreasonable, absurd, and unjust.

CHAP. XXVI.

The third Objection, touching the repeal of Charta Mercatoria by King Edw. II. and the remittall of divers Impositeons by King Edw. III. upon sundry Petitions of the Commons in Parliament, and the punishment of divers Persons in Parliament for procuring Impositions to be set up.

THIRDLY, it is objected, that this Prerogative of laying Impositions upon Merchandizes, hath never at any time been set a foot and used by any of His Majestie's Progenitors, but it hath been contradicted, and upon Petitions of the people, such Impositions have been suspended, remitted, and abolished; first, King Edw. I. say they, in the 31 year of his Reign, did by his Charter called *Mercatoria*, spoken of before, lay the Imposition of three pence in the pound, now called the petty-Custome, with an increase of other duties upon

Merchandizes imported by Strangers; howbeit, this Imposition stood not above seven years by vertue of that Charter, but it was discontinued and quite taken away; for in 3 Edw. II. the Charter it self was suspended by the King's Writ, 3 Edw. II. *Claus. m* 23, in *Arch Turris*, and 5 Edw. II. it was utterly repealed by a solemn Ordinance of State, *Rot. Ordina*, 3 Edw. II. in *Arch. Turris*.

Secondly, King Edw. III. did at sundry times during his Reign, lay severall Impositions upon Woolls and other Staple commodities; sometimes fourty shillings, sometimes fifty shillings upon a Sack of Wooll, and other the like rates upon Merchandizes, yet could he never fix nor settle the same upon His Subjects; for upon sundry Petitions of the Commons in Parliament, who found themselves grieved therewith, these Impositions were from time to time remitted, 13 Edw. III. *Rot. Parliament*. in *Arch. Turris*, 14 Edw. III. *cap.* 21. 17 Ed. III. *Rot. Parliament. numb.* 12. 12 Ed. III. *Rot. Parliament. numb.* 11.

Again, the same King many times did shut up all the Ports, and thereby restrained the exportation of Merchandizes; then would he take great sums of Money to grant licenses to transport, which proved as great a charge as Impositions, and yet upon sundry complaints of the people in Parliament, the Sea was set open, and liberty of Trade permitted again, *Stat.* 18 Edw. III. *cap.* 3. 22 Edw. III. *Rot. Parliament. numb.* 8. in *Arch. Turris*, 13 Edw. III. in *Secio Angliæ. Rot.* 12. 13 Edw, III. *Rot. Parliament. numb.* 5 in *Arch. Turris*.

Lastly, in the last year of this King's Reign, divers persons were accused and punished in Parliament, for procuring new Impositions to bee

set upon Merchandizes, namely, the Lord Latimer, who albeit he were a Noble man, and a Privy Counsellor to the King, yet was he fined, committed to the Marshalsee: and put out of the Council, 50 Edw. III. *Rot. Parliament. nu. 34 in Arch Turris.* Richard Lions likewise, a Citizen of London, and Farmer of the Customes, an Instrument of the L. Latimer's in raising the new Impositions, was fined, ransomed, and imprisoned, and put from the Franchise of the Citie. 50 Edw. II. *Rot. Parliament. numb. 17. in Arch. Turris.* And one John Peachy, who had gotten a Monoply of Sweet Wines, by Letters Patents, and by colour thereof had extorted three shillings and four pence out of every Pipe or Vessell of Wine vented by others, was also fined and imprisoned, and made satisfaction to the parties grieved: 50 Edw. III. *Rot. Parli. numb. 33.* and more than this, a Bill was preferred by the Commons in this Parliament, that such as should set new Impositions, should have Judgement of life and member: 50 Edw. III. *Rot. Parliament. numb. 191 in Arch. Turris.* These examples strook such a terrour at that time, as from the time of King Edw. III. till the Reign of Queen Mary, being a hundred and fifty years and upwards, there was no man found that would advise the King of England to set or levie any Impositions upon Merchandizes by Prerogative, and therefore we find no Imposition laid upó Merchandizes all that space of time. Queen Mary indeed began to set on foot this Prerogative again, and laid an Imposition of three shillings and eight pence upon every Cloth transported out of the Kingdome; but what doth the Lord Dyer report, 1 Eliz. *f. 165?* the Merchants of London (saith he) found themselves

greatly grieved, and made exclamation and sute to Queen Elizabeth to be disburthened of that Imposition, because it was not granted by Parliament, but assessed by Queen Mary her absolute power. These frequent Petitions, complaints, and exclamations, these suspensions and remittalls of Impositions, are good arguments (say they) against the right of this Prerogative.

CHAP. XXVII.

The Answer to the third Objection.

THIS Objection consisteth of several parts, and shall recieve an Answer consisting of divers parts. The first part of this answer, King Edw. I. being a prudent and resolute Prince, did not onely impose the three pence upon the pound upon Merchant Strangers, by his *Charta Mercatoria*, but justified and maintained that Imposition during his life. True it is, that after his death, King Edw. II. it was repealed, as is before objected; but whose Act was this? by whom was this Ordinance made, which did repeal this Charter? not by the King and his Parliament, but by certain rebellious Barons, who took upon them the Government of the Realm, and called themselves Ordainers: Wherefore King Edw. III. in the first year of his Reign, did revive that Charter, and commanded by his Writ that the Customes and Duties therein contained should be collected and levied to his use; He maketh mention of these Ordinances of 5 Edw. II. and saith the same were made *per quosdā Magnates*, and not by the King, as appeareth by the Record, 1 Edw. III. *Rot. fin. memb. 30. in Arch. Turris*, which in another place before I have recited; by which Record it likewise appeareth,

that those Ordinances 5 Edw. II. were before that time repealed and made void, and therefore that which was done in that time of that unfortunate Prince, over-ruled by his unruly Barons, is not to be urged and used as an example, especially since they that urge this repeal of *Charta Mercatoria*, might, if they would find any thing which makes against their contradicting humour, find in the said Roll of Ordinance, made in 5 Edw. II. divers Articles wherein those Ordainers did wrong and wound the Prerogative in matter of greater importance than in the repeal of that Charter; for they might have found among the same Ordinances these things ordained.

First, that the King should not make gifts of Lands, Rents, Franchises, Wards, or Escheats, without the consent of the Ordainers.

Secondly, that all gifts and grants formerly made by the King, not only of Land and other things in England, but in Gasconie, Ireland, and Scotland, should be resumed and made void.

Thirdly, that the King should not depart out of the Realm, nor make Warre, without the assent of his Barons, and of his Parliament.

That because the King was misguided and counselled by evill Counsellors, it was ordained, that all his Counsel should be renewed, and new Officers and Servants appointed for him.

These traitorous Ordinances were made against the King at that time, and therefore it is a shame that any part of these Ordinances should be made an argument against the right of the Crown in laying Impositions upon Merchandizes; for with the same reasons they might argue the King had no right to grant his Lands, Rents, Wards, or

Escheats, that he might not go out of the Realm, nor make Warre, nor choose his own Counsellers or Servants without an Act of Parliament; and it is manifest, that those factious Barons did cause the King to forego the said Impositions, rather *ad faciendum populum*, and to gratifie the Cōmons, and to draw them to their party, than for the good of the Cōmon-wealth; for if they had been good Counsellers they would have done as the Senate of Rome did, when Nero in a glorious humor to please the people, would needs have discharged at once all Customes and Impositions; the Senate gave him thanks for his favour towards the people, but utterly diswaded him so to doe; telling him, that in so doing, he would ruine the state of the Common-wealth; for indeed no Common-wealth can stand without these duties, they are *Nervi*, they are *succus & sanguis Reipublicæ*, and therefore no Cōmon-wealth was ever without them, but the imaginary Common-wealths of Plato and Sir Thomas More, for they doe both agree; for in the Common-wealths of which they dream, there was nothing to be paid for Merchandizes exported and imported. But to return to King Edw. II. what followed upon the Repeal of *Charta Mercatoria*, and the discharge of Impositions which King Edw. I. established? was not that poor Prince King Edw. II. enforced to take up great sums of money of his Merchants, by way of loan, which he never repaid again: 11 Edw. II. *Rot. fin. m.* 12. whereby the Merchants received a greater detriment than if they had made a double payment of Customes and Impositions which the King had discharged, and therefore the example of this weak Prince doth make but a weak argument against the right of

the Crown, in laying Impositions upon Merchandizes; and here I think it fit to observe that they were all wise and worthy Princes which are spoken of in former ages, to have laid Impositions upon Merchandizes, namely Solomon in the Holy Land, Julius Cæsar and Augustus Cæsar in the Empire, King Ed. I. and King Ed. III. in England; but on the other part, they which released all Customes and Impositions, were but weak Princes, and destroyed themselves and the Common-wealth wherein they lived; namely Nero in the Empire of Rome, King Edw. II. and King Rich. II. with us, and truly by the rule of our Common Law, the King cannot, if he would release all Subsidies and Aids of his Subjects, that they should be for ever discharged of all Subsidies to be given to the Crown; such a grant were made void, and against the Law.

Secondly, touching the Petitions exhibited to the King in sundry Parliaments, against Impositions laid by that King upon Merchandizes; upon view of the Record wherein these Petitions are contained, with their answers made by the King thereunto, it is evident, that neither the Petitions of the people, nor the King's answers thereunto, do disprove this right of the Crown to lay Impositions upon Merchandizes; for Petitions do not of necessity prove or suppose the Petitioners have received wrong. Petitions are of divers kinds. 1. There are Petitions of Grace, which do not insist upon any right, but upon meer Grace and Favour. 2. There are Petitions of Right, wherein the Petitioner doth set forth a pretended right, and yet perhaps upon examination it is found that they have no right at all, and commonly they ask more

than their right is, *Iniquum petas ut æquum feras*. 3. There are Petitions *Armatae*, when a company of Rebels armed against the Crown, do yet preferre their Petitions, but with an intent to effect their desire, whether it be right or wrong, if their Petitions be not granted. *Et stricto supplicat ense petens*, many of their armed Petitions were exhibited during the Barons' Wars, during the Wars of Lancaster and York, and in sundry popular comotions since the Conquest. But these Petitions which we speak of were made by the Commons, or by some factious Spirits, in the name of the Commons, in sundry Parliaments holden during the Reign of King Edw. III. Howbeit, if wee look upon the form of these Petitions, we shall find there is nothing sought but Grace and Favour; and if we consider the King's answers, though many of them be very gracious, we shall find him therein much reserved, and withall circumspect not to prejudice or conclude his Prerogative in point of right. The form of these Petitions was for most part but thus, The Commons pray, that the Impositions or Maletolt of fourty shillings upon every Sack of Wooll may cease or be taken away, and that the Custome of the demi-mark may onely be taken: Or thus, The Cōmons pray, that the passage of the Sea may be open to all manner of Merchants and Merchandizes, as it had been in former times. Herein we find no claim or challenge of right, but a modest prayer of Grace and Favour, unlesse the word *Mayletolt* may seem to imply a wrong, because some do conceive that the word doth signifie an evil Toll, whereas indeed the word doth signifie Toll-money: for *Mayle* in old French is a small peece of money, and therefore the rents

taken by force in the Borders of Scotland was called *Blackmayle*, and the word *Mayletolt*, in some of our old Statutes is taken *in bonam partem*, which speaks of *Droiturell Mayletolts*. But in what form doth Edw. III. make his Answers to those Petitions? in divers formes, according to the diversity of the occasions and reasons of State, but alwayes in a gentle and gracious manner. Sometime he granteth the Petition in part onely, for a certain time, or after a certain time expired, that his people may know, that as he receiveth part of the Petition, so he might have rejected the whole if he might have been so pleased; sometimes he granted the whole Petition, yet not absolutely but conditionally, that hee may receive a greater recompence. But wheresoever he doth franckly yeeld to remit any Imposition, we find in the same Record a Subsidy granted unto him of far greater value and profit than the Imposition by him remitted, wherein we perceive that he followed the wise counsell of Roaboam's old Counsellors, given in the like case of Impositions, 3 Kings *cap. 12 si hodie obedieris populo huic & petitioni eorum cesseris locutusque, diebus, &c.* Sometimes he gives a generall or doubtfull answer, and sometimes hee is silent and gives no answer at all; so as he doth never bind nor conclude himself by any of those answers to those Petitions, but with such reservation as he might still make use of his Prerogative in laying Impositions upon Merchandizes. To demonstrate this point more plainly, it were not amiss out of many Records which I have seen, and whereof I have the Copies transcribed out of the Records themselves, with mine own hands, to select and set down some of those Answers in any of the

kinds aforesaid. In 14 Edw. III. *cap.* 21. the Cōmons pray the King that he would grant an Act of Parliament that no more Custome should bee taken for a Sack of Wool but a demi-mark, nor for Lead, nor Tin, nor Leather, nor Wooll-fells, but the old Customes. This Petition is general and extending to all Staple Comodities without exceptions of persons, or limitation of times; but what is the King's answer? That from the Feast of *Pentecost*, which commeth, unto a year, neither he nor his Heirs shall take of any Englishman for a Sack of Wooll, more Custome than the half Mark, and upon Wooll-fells, and Leather, no more than the old Custome.

Here this Petition is granted but in part; First, in respect of the persons, for Englishmen only are favoured, and Strangers omitted; Secondly, onely in respect of the Commodities, for Wooll-fells onely are exempted, and Tin and Lead remain to be charged as before; Thirdly, in respect of the time, for the King continueth his Impositions formerly laid for a year and more, notwithstanding that Petition.

But let us see withall what the King did gain in Parliament, upon yeelding to the people's Petition but in part; in the first Sessions of this Parliament, it was granted that every man who should ship Woolls over the Seas, should find Sureties to bring in upon his first return, for every Sack of Wooll, two Marks of Silver, Plate or Bullion, and to deliver it to the King's Executors; and in the next Sessions there was granted unto him the nineth Fleece, the nineth Lamb, and the nineth Sheaf of Corn throughout the Realm; which the people did often times redeem with a gift of twenty thousand Sacks of Wool.

Here we see the fruit that the King made by following of Rohoboam's old Counsellors, and yet out of this grant and remission made by the King, who can draw an Argument against the King's right in laying Impositions upon Merchandizes?

Again, 29 Edw. III. when there lay an Imposition of fourty shillings upon a Sack of Wooll above the old Customes, a Conference was had between the Lords and Commons in the White-Chamber at Westmin. where after a short Parliament, saith the Record, 29 Edw. III. *Rot. Parliament, numb. 11. in Arch. Turris.*—It was concluded, that the King should have a greater Subsidie out of Wooll, Wooll-fells, and Leather, for six years; so as during that time, the King did lay no other, Impositions or Charge upon the Commons. Here is a conditionall agreement between the King and the people, and here the King doth remit his power of Imposition, for a recompence of greater value.

And this is a strong Argument, That the King had right to impose, otherwise the people would never have bought their freedom from Impositions at so high a rate or price.

The like conditionall agreement between the King and the people, we find in 6 Edw. III. *Rot. Parliament, numb. 4.* 13 Ed. III. *Rot. Parliament, numb. 5.* 18 Edw. III. *Rot. Parliament, numb. 10.* 26. *in Arch. Turris.*

In 28 Edw. III. *Rot. Parliament, numb. 26.* The Commons complain of an excessive Imposition upon Wooll-fells, and desire that the old Custome might be paid. The King's Answer is, the old Custome ought not to be withdrawn.

In 38 Edw. III. *Rot. Parliament, numb. 26.* The

Commons desire that an Imposition of three shillings and four pence upon every Sack of Wooll at Callis, and all unreasonable Impositions, bee repealed.

The King's answer unto this is, It pleaseth the King that all unreasonable Impositions be repealed; like unto this is that answer which is contained in the Parliament's Rolls of 6 Edw. III. *numb. 4. in Arch. Turris*. When Petition was made for removall of Imposition, I shall saith the King, asseesse no such Tallages in time to come, but in manner as it hath been in time of mine Ancestors, and ought to be by reason.

Can any wit of man pick any Arguments out of these Answers against the right of the Crown, in setting Imposition upon Merchandizes?

Lastly, in 13 Edw. III. *Rot. Parliament. numb. 13*. the Commons pray, that the Maletolts of Wooll may be taken as it was used in former times, being then enhaunsed without the Assent of the Commons.

To this Petition there is no answer found of Record; the King is silent, and gives no answer at all; which doubtless the King had not refused to do, if the Petition had been exhibited in point of right, and not in point of favour.

Thirdly, touching the punishing of the persons before mentioned, for procuring of new Impositions to be set upon Merchandizes, we are to consider two circumstances; first, the time when, and next the causes whereof these persons were called in question.

The time when these persons were called to account, was a Parliament holden in 50 Edw. III. the last year of that King's Reign, at which time that great and renowned Prince, who had been

formerly assisted by a most wise and politique Councill, was become weak and stupid, and almost through dispair, through sicknesse, age, melancholy, conceived upon the death of his eldest Son the Black Prince, and suffered himself to be ill-governed by a Woman called Alice Perrey, and her Favourite the Lord Latimer; upon which occasion and advantage, the Commons grew more bold than they were wont to be in former Parliaments, and therefore if ought had been done in that Parliament, which might prejudice the King's Prerogative, it is not to be urged as an example or president in these times; but in truth, the causes for which these persons were censured, do rather approve the right of the Crown in laying Impositions, than any way disaffirm the same. First, Richard Lions, a Farmer of the Customes, was accused in this Parliament by the Commons, that he had set and procured to be set upon Wooll, and other Merchandizes, certain new Imposition without assent of Parliament, converting the same to his own use without controule, the High Treasurer not being acquainted therewith, the said Richard assuming to himself in divers things as a King, 50 Edw. III. *Rot. Parliament. numb. 16, 18, 19, 20.* This was his Accusation, and though his answer were, that he set those Impositions by the King's Commandment, yet did he shew no Warrant for it, and therefore was justly punished with fine, ransome, disfranchisement, and imprisonment.

But how may this insolvency and misdemeanour of a Subject, be an argument against the right or Prerogative of the King? Lions, a Merchant of his own head cannot set Impositions upon Merchandizes; *Ergo*, King Edw. III. a Monarch, of

his Royall Authority cannot do it; what an absurd argument were this? as if a man should say, it were High Treason in a Subject to Coyn money; *Ergo*, the King himself cannot do it, or cause it to bee done; besides, the accusation it self doth imply, that the King hath power to impose upon Merchandizes, because Lions is charged, being a Subject, to take upon him as a King in divers things, and mainly, in setting of Impositiōs; as if they should have said a King may do it, but not a Subject, according to the rules of the Imperial Law, *Solus Princeps instituit vectigalia Regni tantum juris & muneris est indicere vectigalia, imponere vectigalia maximi Imperii est, inferior a Principe non potest imponere*, and the like.

And the Bill exhibited by the Commons in this Parliament, 50 Edw. III. *Rot. Parliament.* 191. praying that those that should set new Impositions by their own Authority, encroaching unto themselves Royal Power, might have Judgement of life and member; seemeth to be grounded upon good reason, and doth prove it is a Mark of Sovereignty and Royall Power to set Impositions; and therefore if a Subject of his own head, of his own authority wil presume to do it, he is worthy to dye for it; and yet this Bill did receive but a general answer, viz. Let the Common Law run as it hath been used heretofore.

Touching the Lord Latimer's censure, he had not only upon his own head and authority set sundry Impositions upon Merchandizes at Callis, where the Staple there was much decayed; but he was charged with sundry other misdemeanors mentioned in the said Roll, namely, that he brought in divers Tallies and Tickets, whereby

the King was indebted unto his Souldiers and Pensioners, for which he gave little or nothing to the parties, and yet had an entire allowance in the Exchequer, to the great damage of the King, and scandall of the Court; that he had also deceived the King of the pay and wages which he had sent unto his Souldiers in Britain; that he had sold a great quantity of the King's provisions for his Army there, and converted the same to his own use; and that he had delivered up the Town of Saint Saviours in Normandy, and the Town and Fort of Betherell in Britainy, not without suspicion of Corruption and Treason.

How can the Lord Latimer's censure for these deceits and misdemeanors make an argument against the right of the Crown in laying Impositions upon Merchandizes?

And the like may be said of the punishment of John Peachy, who having got a Patent that none should sell sweet Wines within the City of London but himself, his Deputies, and Assignes; by colour thereof did extort three shillings and four pence, out of every Pipe or Vessell of sweet Wine sold by others within the City. Shall this extortion committed by a Subject, by colour of a Patent, where perhaps the Patent doth not warrant it, be objected as an argument, that the King himself might not lay the like Imposition upon every Pipe or Vessel by vertue of his Prerogative? therefore the punishment of these presons was not the cause, that for an 150. yeares after that, no Impositions were layd upon Merchandizes by Prerogative; but the Princes who succeeded Edw. III. untill Queen Mary, did forbear to use their Prerogative in that kind, for those other notable and true

causes which are before at large expressed in the seventeenth Chapter.

Lastly, touching the Imposition of six shillings and eight pence upon every Cloth, laid by Queen Mary, after the losse of Callis; she held the same with a new Imposition upon French Wines, without any question during her life; and albeit complaint were made against the Imposition set upon Cloaths unto Queen Elizabeth, upon her first entry (as it is usuall for the people to complain of burthens and charges upon every change of Government.) Yet we find that after the Conference of the Judges spoken of by my Lord Dyer, 1 Eliz. f. 165. Dyer. (though their resolution be not there reported) Queen Elizabeth did continue that Imposition, and also the Impost upon French Wines, as being lawfull set for the space of fourty four years without any further contradiction; besides, Queen Elizabeth did raise divers other new Impositions, as is before declared, whereunto there was never made any opposition during her Reign, and which his Majesty that now is, hath received without any question for the space of fifteen years; and thus much may suffice for answer to the several points in the third Objection.

CHAP. XXVIII.

The fourth Objection, that the Prerogative is bound or taken away by divers Acts of Parliament.

FOURTHLY, it is objected, That though it were granted and admitted, that the King *de jure communi*, hath a rightful Prerogative to lay Impositions upon Merchandizes, yet that power say they, is restrained and taken away by sundry Acts of Parliament.

First, the Statute of *Magna Charta*, *cap.* 30. doth give safe conduct and free passage to all Merchants to buy and sell, *absque aliquibus malis tolnetis per antiquas & rectas consuetudines*. Secondly, by the Act or Charter of confirmation in 25 Edw. III. the King doth release a Mayltolt of fourty shillings upon a Sack of Wooll, and doth grant for him and his Heirs, unto the Commons, that he shall not take such things without the Commons' consent or good will ; and in the same Act or Charter reciting, that wheras divers people of the Realm were in fear, that the Aids and Taxes which they had given to the King before that time, was towards his War, and other businesses of their own grant and good will, might turn to a bondage of them and their heirs, because in time to come they might be found in the Rolls ; and were likewise grieved for Prizes taken throught the Realm, The King doth grant for him and his Heirs, That he will not draw such Ayds, Taxes, or Prizes, into a Custome, for anything that had been done before that time, be it by Roll or any other president that may bee found. Thirdly, by the Statute, 14 Edw. III *cap.* 12. the King doth grant that all Merchants Denizens, and Aliens, may freely come into the Realm with their goods and Merchandizes, and freely tarry there, and safely return, paying their Customes, Subsidies, and profits thereof, reasonably due. Fourthly, by the Statute 11 Richard II. *cap.* 9. it is enacted, That no Imposition or Charge be put upon Wools, Wooll-fells or Leather, other than the Custome or Subsidie granted to the King in that Parliament ; if any be, the same to be annulled and repealed, saving to the King his ancient right. There are other Acts of Parliament containing the same sence

and substance, but these principally have been singled out, and cited as specially Statutes restraining and taking away the King's Prerogative in laying Impositions upon Merchandizes.

CHAP. XXIX.

The Answer to the fourth Objection.

TO this Objection, first I answer, That this being a Prerogative in point of Government, as well as in point of profit, it cannot be restrained or bound by Act of Parliament, it cannot be limited by any certain or fixt Rule of Law, no more than the course of a Pilot upon the Sea, who must turn the Helme, or bear higher or lower sail according to the wind and weather; and therefore it may be properly said, That the King's Prerogative in this point is as strong as Samson, it cannot be bound; for though an Act of Parliament be made to restrain it, and the King doth give his consent unto it, as Samson was bound with his own consent, yet if the Philistins come, that is, if any just or important occasion do arise, it cannot hold or restrain the Prerogative, it will be as thred, and broken as easie as the bonds of Samson; and again, *Jus imponendi vectigalia inhæret sceptro*, saith the Law Imperiall, & *quod Sceptro inhæret non protest tolli nisi sublato Sceptro*. The King's Prerogatives are the Sunbeams of his Crown, and as inseparable from it as the Sun-beams from the Sun. The King's Crown must be taken from his head, before his Prerogative can be taken away from him; Samson's hair must be cut off, before his courage can be any jot abated. Hence it is, that neither the King's Act, nor any Act of Parliament can give away his Prerogative; for in his own Act the King cannot

release a *tenure in Capite*, nor grant it to any Subject, Dyer 44. If the King grant Land to J.S. to hold as freely as the King himselfe holds his Crown, he shall hold his Land still of the King in *Capite*, and if he alien it hee shall pay a Fine; for the tenure is vested in the King by his Prerogative, saith the Book, 14 Hen. VI. 12: and therefore when King Edw. III did grant unto the Black Prince, his eldest Son, the Dutchy of Cornwall, *una cum omnibus wardis maritagiiis & releviis, &c. non obstante Prerogativa Regis*, the Prince could not seize a Ward that held of the King's Ward, who held in *Capite* of the King, because it belonged to the King by his Prerogative. 34 Ass. pl. 25; whereby it is manifest, that the King by his own Grant cannot sever his Prerogative from the Crown, nor communicate any part thereof to any one, not to the Prince his eldest Son; and in this case of Tenure it was resolved in the last Assembly of Parliament in England, That no Act of Parliament could be framed by the wit of man, whereby all Tenures of the Crown might be extinguished; neither can any Act of Parliament in the flat Negative, take away the King's Prerogative in the affirmative.

The King hath a Prerogative in the affirmation, that he may pardon all Malefactors: There is a Statute made at Northampton, 2 Edw. 3. That no Charter of pardon for killing a man shold thenceforward be granted, but in one case, where one man killeth another in his own defence by misfortune: Hath this Statute so bound the Prerogative, as no man ever since hath been pardoned for killing a man, but in the cases before mentioned? The King hath a Prerogative in

point of Government, to make choice of the Sheriff in every County: there is a Statute made, 28 Edw. 3. *cap.* 7. That no man shall be Sheriff two years together, and that no Commission shall be granted or renew'd for the year following, to him that hath been Sheriff the year before: Was the King's Prerogative bound by this Statute when hee granted the Sheriffrick of Northumberland, to the Earle of Northumberland during his life, with *non obstante* of that Statute 2 Hen. VII. *fol.* 6? Again, the King hath no ancient and absolute power to grant dispensation for holding Ecclesiastical Benefices in *Cōmendum*. There is a Statute made 7 Edw. 3. in Ireland, whereby it is enacted and declared, that the King's dispensation in this case shall be utterly void, if it be not by Act of Parliament: did this Statute so derogate from the King's Prerogative, and so restrain it, that he might not only by his Letters Patents, Grant *Cōmendamus*, before the Statute of 28 Hen. VIII. in this Realm? assuredly the King's dispensation *non obstante* the Statute would have taken away the force thereof, as if no such Law had ever been made: There are many other cases of like nature which I omit. As for the particular Statutes before recited, the words thereof are too generall to bind or restrain this Prerogative in laying Impositions upon Merchandizes. First, that Statute of *Magna Charta* doth give safe-conduct to all Merchants to come and go, and to tarry within the Realm, and to buy and sell their Merchandizes, *sine malis tolnetis per antiquas & rectas consuetudines*. How do these generall words restrain the King's Prerogative in this Case? for the ancient Common Law of the Land, which is the Common Custome of the

Realm, doth warrant and approve the King's Prerogative in laying Impositions upon Merchandizes, as before I have fully and clearly proved. Then a reasonable Imposition laid by the King is *Antiqua & recta consuetudo* warranted and approved by the Great Charter.

Secondly, albeit King Edw. I. by Act or Charter of confirmation of *Charta Mercatoria*, made in Anno 25. of his Reign, doth release the Maletolt of fourty shillings upon a Sack of Wooll; and doth grant for him and his heirs, that he will take no such thing without the assent and good-will of the Commons. That word (*such*) doth not absolutely bind the King's Prerog. that he shall lay no Imposition at all; for it is to be intended such in quantity, such in excess: for fourty shillings at that time was as much as six pound at this day, which the scarcity of money in those dayes being considered, and compared with the plenty of money at this day, might then be said to be a great burthen, and yet this strong band doth not bind K. Ed. III. his Grand child but that, notwithstanding this Charter or Act of Parliament, he took these things in greater quantities, sometimes fourty shillings, sometimes fifty shillings, upon a Sack of Wooll; when the Philistins came upon him, that is, when the Wars of France, and other urgent occasions did presse him to it. As to the other Article contained in the Act or Charter of 25 Edw. III. where it is said the people did fear, lest the Aids and Taxes granted of their good will to the King might turn to a bondage to them and their heires, when the same in time to come should be found in the Rolls; and the King did grant for him and his heirs, That he would not draw such

Ayds and Taxes into a Custome; that Act in this point restraineth not the King's Prerogative in setting Impositions upon Merchandizes, for it speaketh only of Ayds and Taxes willingly granted by the people in Parliament, and therefore I marvell that this Article was ever objected or used as an argument against Impositions; and where the King doth grant that such Ayds shall not be drawn into a Custome, such words are usuall in the preambles of Acts of Subsidies where the grant is large and extraordinary, viz. That it may not be drawn into an example, that it may not be a president in future times; and yet succeeding Parliaments have not forbore to grant as large Subsidies as formerly were granted.

Thirdly, the Statute of 14 Edw. III. *cap.* 12. doth rather maintain the King's Prerogative in this case, than any way impugne or impeach it; for by that Law free passage is granted to all Merchants, paying the Customes, Subsidies, and profits thereof reasonably due. Now certain it is, that all duties payable to the King for Merchandizes, are of three kinds only, Customes, which are these ancient and certain duties, wherein the Crown hath no Inheritance, as is before expressed; Subsidies which are granted by Act of Parliament; and Impositions, which were raised from time to time by the King's Prerogative onely: we find not a fourth kind, and therefore the word *Profits* must needs be taken for Impositions.

Fourthly, the Statue of 11 Rich. II. *cap.* 9. though it provide in expresse terms, that no Imposition or Charge be layd upon Wooll, Wooll-fells, or Leather, other than the Custome or Subsidy granted in that Parliament, yet it saveth alwayes

to the King his ancient rights. This was as turbulent a Parliament as ever was holden in England, and yet was the King's Right acknowledged, though the unruly Lords and Commons did in a manner force his Assent to limit his Prerogative at that time.

Lastly, if these Acts had absolutely bound the King's Prerogative, and had been observed literally and punctually untill this time, the King should onely have had at this day the Demi-mark for our own Staple Wares, and perhaps the three pence Custome for Foreign Commodities, and no more. What an inconvenience, what an absurdity had this been at this day, when all Foreign Princes have raised their Customes to an exceeding height? when as I have noted before the necessary expenses of the Crown are so much increased, when the prizes of all Commodities are so much enhanced, when there is so great a plenty of money in this part of the World, when the King's Revenue within the Land is so much improved; Is it fit that Duties payable for Merchandizes should stand at a stay and keep the old rates without augmentation?

CHAP. XXX.

The fifth Objection, that Tonnage and Poundage were never taken, but when the same was granted by Parliament.

FIFTHLY, it is objected, that the Subsidies of Tonnage and Poundage, were never taken by any King of England, but when the same were granted by Act of Parliament; which is an Argument, say they, that the King could never take those duties but by his absolute power, for if his Prerogative

could have imposed those rates of itself, what need was there of an Act of Parliament? why should the King have expected the consent of the Commons? *cum Dominus eis opus habet*, and when the Exchequer were empty, as the Jewells of the Crown were layd to pawn by some of those Kings who were glad to take these Subsidies by Acts of Parliament.

CHAP. XXXI.

The Answer to the fifth Objection.

THE Answer to this Objection is twofold; First, That which is objected is not true, for Tonnage and Poundage have been taken by the King's Prerogative without Act of Parliament; Secondly, If it had been true, it is no Argument against the King's Prerogative in this point; for what is Tonnage but a certain sum of money payable for every Tun of Wine imported? did not King Edw. III. by force of his *Charta Mercatoria*, without Act of Parliament, take two shillings for every Tun of Wine imported by Strangers? did not the same King set a new imposition of *Guage*, viz. upon every Tun of Wine brought into London, as is before expressed? and are not the severall Impositions of Wines taken by His Majesty in England and Ireland, a kind of Tonnage? being nothing else than extraordinary rates imposed upon every Tun of Wine, and levied and taken by the King's Prerogative.

Again, was not the three pence upon the pound imposed by King Edw. I. by his *Charta Mercatoria*, a kind of Poundage, and well-nigh as great an Imposition as twelve of the pound granted at this day by Act of Parliament? if we consider the

Standard of Monies in the time of King Edw. I. when a peny sterling did contain as much or more pure Silver, as the three pence sterling doth contain at this day. But admit that no Tonnage or Poundage had ever been taken, but by grant in Parliament; yet it is no Argument, but that the King might impose the like or the same by his Prerogative, for three particular reasons: The first, because these Subsidies were granted for maintainance of the Navy Royall, the charges whereof were grown so great in the time of King Edw. IV. as appeareth by the Act of Tonnage and Poundage granted in the 12 year of that King's Reign, that it sufficed not, nor in time to come was like to suffice or defray the charge of the Crown in keeping the Sea: these are the words of that Act. If then in the time of King Edw. IV. the Subsidy of Tonnage being three shillings upon a Tun of Wine brought in by Denizens, and six shillings upon a tun brought in by Strangers; and the Subsidy of Poundage or of twelve pence of the pound upon other Cōmodities was not then sufficient to bear the charge of the Royall Navy, which was not comparable by many degrees in strength, and beauty, and multitude of Ships to the King's Navie at this day.—Doth it stand with reason, that the Crown should be stinted or limited ever after to take no more than those poor Subsidies granted at that time? that the King should wait for a Parliament, and pray an ayde of the Commons for a competent means to maintain the Walls of the Kingdom, when by the Common Law of the Realm he may grant Letters Patents for Murage, to maintain the Walls of a Corporate Town? If any unexpected necessity should arise for repairing

of the Navy Royall, and making a Navall War, should the King expect a Parliament for a greater Subsidy to be granted by the Commons before he should rigge and make ready his Ships? perhaps a Kingdom might be lost in the mean time; as if a Pilot sitting at the Helm, and seeing a sudden gust of wind, would over-set the Ship, or perceiving her to be running on a Rock, should forbear to turn the Helm, or cause the Sail to be stricken, untill he had consulted with the Mariners or Passengers, and demanded their consent or counsell in the businesse; the Pilot himself with his Mariners and Passengers might be cast away, before they were agreed what course to take.

Secondly, these Subsidies of Tonnage and Poundage were first granted by Act of Parliament, in the time of the Civill Wars between the two great Houses of Lancaster and York, when the severall Kings were loath to make use of their Prerogatives, but were glad to please their people, and loath to impose any charge upon them, but by common consent in those troublesome times.

Thirdly, Kings and Princes oftentimes of their own noble nature, and sometimes in policy, do accept that of their Subjects as a gift, which they might exact and take as a duty; and therefore our most potent and politique Kings have ordained and accepted many things in Parliament, which they might have done in their private Chambers by their own prerogative, without any other Ceremony. Who ever made doubt of the King's Prerogative in establishing the Standard of monies? and yet how many Acts of Parliament do we find touching Monies, in the times of King E. I. and King Edw. II! the King's Prerogative in making

and establishing Marshall Law, was never yet in question, yet are there Acts of Parliament touching Musters, departures of Souldiers without their Captains' Licences, or the like.

The King only doth give Honours, and places of precedency, yet King Hen. VIII. made an Act of Parliament, whereby he rancked the great Offices of the Crown in their severall places, as well in Council as in Parliament.

No man ever doubted but the King being the Fountain of Justice, may erect Courts of Justice by his Prerogative, yet we find the Court of Augmentations, and the Court of Wards, erected by Act of Parliament.

Lastly, in the time of Edw. II. we find an Act of Declaration of the principall Prerogatives of the Crown of England, were most undoubted and clear, yet His Majesty was pleased in his first Parliament to accept of an Act of Recognition.

CHAP. XXXII.

The Conclusion.

BY these reasons and demonstrations which are before expressed, it is evident, that the King of England by vertue of an ancient Prerogative inherent to the Crown and Scepter, may justly and lawfully set Impositions upon Merchandizes, and may limit and rate the quantity and proportion thereof by his own wisdom and discretion, without Act of Parliament; and this Prerogative is warranted and approved by the generall Law of Nations, and the Law Merchant, which is a principall branch of the Law of Nations; by the Imperial Law, the Ecclesiasticall Law, and by the rule of the Common Law of England, and by the

practice of the most prudent Kings and Queens of England since the Conquest ; and that this Prerogative is grounded upon many excellent reasons, and that the severall Objections made against this Prerogative, are but shadows and colours of reason, and clearly removed and washed away by the severall Answers thereunto.

CHAP. XXXIII.

A Comparison of the Impositions set and taken in England, by the King's Prerogative, with the Exceptions and Gabells in Forein States and Kingdoms, whereby it will appear, that the Subjects of the Crown of England, do not bear so heavy a burthen by many degrees, as the Subjects of other Nations do bear in this kind.

ALBEIT, indeed the King of England being no Emperor, and having all Imperiall Rights within his own Kingdoms, hath and ever had as absolute a Prerogative *Imponere vectigalia*, or to lay Impositions, as the Emperor of Rome or Germany, or any other King, Prince, or State in the world, now have, or ever had ; yet let it be truly said for the honor of the Crown of England, That His Majesty that now is, and all his Noble Progenitors, have used and put in practice this Prerogative with more moderation and favor toward the people, than any Forein State or Prince in the world have besides, and that in three respects.

First, the King of England doth make use of this Prerogative only, in laying Impositions upon Merchandizes crossing the Seas ; upon such onely, and not upon any other goods which are bought and sold within the Land ; neither doth he by his absolute power alone, impose any Tax upon Lands

or *Capita hominum*, or *Capita animalium*, or upon other things innumerable, whereof there are strange presidents and examples, both Ancient and Modern, in other Countries.

Secondly, the King doth not charge all Merchandizes crossing the Seas, with this Imposition now in question; for in the Letters Patent whereby the Imposition of twelve pence in the pound over and above the Subsidie of Poundage, is laid and limited, divers kinds of Commodities are excepted, especially such as serve for food and subsistence of the King's people, for setting the poor on work, for maintainance of Navigation, and other things of like nature, as before is declared.

Thirdly, the Impositions which are laid by the Kings of England upon Merchandizes, are not so high as the Impositions and Exactions set and taken by other Princes and States; for the highest Imposition in Ireland is but twelve pence upon the pound, or but a single Poundage, which is but five in the hundred, and is the lowest rate in Christendome at this day, and in England there is added but twelve pence in the pound more, which is but ten pound upon the hundred pound; and yet divers sorts of Merchandizes, as I said before, are excepted and discharged of that Imposition of the second Imposition of twelve pence.

But on the other side let us see the practice of other Princes and States in laying Impositions, and how far they have extended and strained their Prerogative in that point, beyond and above the Impositions in England. I will begin with the Romans, when they had gained the Monarchy of the World, so as all Kingly power did rest in their Emperer.

First, Julius Cæsar laid the first Imposition upon Forein Merchandizes, saith *Suetonius*, *peregrinarum mercium portaria primus instituit*, and that Imposition was *Octava rerum pars*; which was more by a fifth part than our highest Imposition in England, for it is two shillings and six pence upon the pound. Next, Augustus Cæsar about the time of our Saviour's Birth, sent out an Edict, whereby he did tax all the world, and this Tax was *Capitatio*, or an Imposition, *super capita hominum*, though the quantity thereof doth not appear; but the poll-money which our Saviour did pay, and wrought a miracle, it seemeth to be an high Imposition, for the peeces of money taken out of the Fishe's mouth, which is called *didrachma* or *stater*, is said to bee worth two shillings and six pence sterling, which being given for himself and Peter, *da illis pro me et te*, shews that fifteen pence sterling was given for a Poll, which must needs amount to an infinite thing, if it were collected over all the World, then subject to the Roman Emperor.

Tiberius the Roman Emperor, who succeeded Augustus, took the hundred part of all things bought and sold within the Empire; which perhaps was an Imposition of greater value and profit than the other. Caligula the Emperor, layd an Imposition upon all Sutes in Law, and took the fourth part of the value of the things sued for, and set a pain upon the Plaintiff if he compounded, or were Non-suted without his Licence. He likewise imposed a number of *Sesterii* upon every Marriage contracted or made within the whole Empire.

Vespasian in meaner and more homelier matters,

took by way of Imposition, a part of every poor Labourer's wages, and part of every Begger's alms; he set likewise an Imposition upon Urine, and pleased himself with this *Apothgem, Dulcis odor lucri ex re qualibet*. Severus the Emperor did impose upon the dishonest gains of the Stews, and took part of the Prostitutes there, as the Bishop of Rome doth at this day; all the Emperors before Trajan, took the twentieth part of all Legacies and Lands descended, as things which came unlooked for, and as a cleer gain, and therefore the Heirs and Legatories might easily spare a part to the Emperor; and Nicephorus, one of the Emperors of the East, did not onely take *fumaria tributa* Smoke-money out of every Chimney, but he layd an Imposition upon every man's Estate that grew suddenly rich, upon a presumption that hee had found a Treasury which did belong to the Emperor by Prerogative. With a little more search I might find out other Impositions of severall kinds, set by the ancient Emperors upon the heads of Beasts, upon the tiles of Houses, and the like; I might adde hereunto the Impositions set by Lorrain, upon every pane of glass in Windows; but these may suffice how high they strained, and how far they extended their Prerogatives in this point of Impositions.

Secondly, the Roman Empire being over-come by the Gothes and Vandalls, and other barbarous Nations, and thereby broken into Kingdomes and Free States, there passed divers ages before these Monarchies could be well settled, and before peace bred plenty, and plenty bred civility, and before Trade, Traffique, Commerce, and Intercourse could be established between these States and Kingdoms,

and therefore while these States and Kingdoms were yet but poor, and while there was a generall scarcity of Gold and Silver in these parts of the World, and so for want of money there was but little Trade and Traffique among the people, either at home or broad, Kings and Princes did not, neither could they make that use of their Prerogative in laying Impositions, as they had done in those latter times. Since all Arts and Sciences have been encreased, all Commodities improved, and the Riches of the East and West Indies have been transported into this Hemisphere. But now let us see whether the Kings and Princes of other Countries round about us at this day, make not a far more profitable use of their Prerogatives in laying Impositions upon their people, than the King of England doth, albeit his Kingly power be full as large as any of theirs.

In France, the most richest and ancientest of the Neighbour Kingdoms, the Impositions not onely upon Merchandizes crossing the Seas, but also upon Lands, Goods, persons of men within the Realm are so many in number, and in name so divers, as it is a pain to name and collect them all, and therefore it must needs be a more painfull thing for the people of that Kingdom to bear them all: *La tallie, le tallon, les aids, les aquavalentes, les equi pollentes, les cruces*, or augmentations of divers kinds, *le hop benevolence la Gabelle*, upon Salt, amounting to an exceeding great Revenue; the Impost of Wines upon every Vessell carried into any walled Towns or Suburbs thereof, and payable, although it be transported thence again, before it be sold, *la hault passage* or *de maine forrein*, for Merchandizes

exported, *le traject forrene*, for Merchandizes imported, *la solid de Cinquants mil holmes*, imposed upon Cities, and walled Towns, and the Suburbs onely, and after layd upon Town and Country, without distinction; the common positions for provisions; the tenthes paid by all Ecclesiasticall persons: These and other Impositions of the like nature, are layd and levied upon the Subjects of France, by the absolute power and Prerogative of the King, and though many of these were imposed at first upon extraordinary occasions, and set but for a time, yet the succeeding Princes have continued them from time to time, and the most part of them made ordinary and perpetuall by King Lewis the XI. who was wont to say, France was a Meadow, which he could have mowed as often as he pleased.

In Spain there is an Imposition named *Alcavala*, imposed as well upon the Nobility, as the Commons, which was first raised by Alphonsus the XII. to expell the Moors, and for the expurgation of Algiers, but afterwards it was made perpetuall, and is now a principall part of the Royall Patrimony, *Gutturis de Gabellis, Quæst. 174.* This Imposition was at first but the twentieth part, but afterwards it was raised to the tenth of every man's Estate, which doth far surmount the highest Impositions that ever were layd in England, by the King's Prerogative, without Act of Parliament.

This *Alcavala* is an Imposition within the Land, but the Impositions upon Merchandizes exported and imported, are far higher, especially upon Merchants' Strangers; for their common Impositions upon Strangers is five parts upon the hundred, and in the year 1604 they imposed thirty of the hun-

dred, as is before declared ; and upon the Ingate of Indian Spices into Portugall, the King of Spain doth lay the greatest rates that ever were set in Christendome, although upon the outgate the rates are more moderate.

In Italy the Impositions and Gabells set upon every kind of thing by the States and Princes there, are intolerable and innumerable.

*Non mihi si Centum Linguae sunt oraque Centum,
Ferrea vox Italorum omnes numerare gabellas,
Cuncta gabellarum percurrere nomina possem.*

Especially upon the great Towns and Territories that are subject to the Great Duke of Tusknie, where there is not any roots, nor any herb, nor the least thing that is necessary for the life of man, that is bought and sold, or brought into any Town, but there is a Gabell or Imposition set upon it ; where no Inholder, Baker, Brewer, or Artificer, can exercise his Trade, but the Great Duke will share with him in his gain, by laying some Imposition upon him ; where no man can travell by Land, or by Water, but at every Bridge, at every Ferry, at every Wharf or Key, at every Gate of a Town, the Garbellor arrests him, and is ready to strip him naked, to search what goods he hath about him, for which he ought to pay the Garbell.

In the Pope's Territories the Impositions which His Holinesse doth lay upon his Subjects as a Temporall Prince, are as many, and as heavy, as those that are levied by the Duke of Tuskanie, in so much as when Sixtus Quintus had set an Imposition upon every thing that served for the use of man's life, Pasquill made hast to dry his Shirt in the Sun, fearing the Pope would set some Imposi-

tion upon the heat of the Sun, *mi astingo* (saith he) in the 16 *sole se venda*; I omit to speak of the Exactions of the Court of Rome, in another kind, which are infinite, and which long lay heavie upon the Western Countries of Christendome, untill of late years some Nations did free themselves thereof, by rejecting the Yoke of the Bishop of Rome.

In the Seigniory of Venice, the Gabells upon the Land were more moderate than in the other parts of Italy; But that City being the Lady of the *Adriatique Sea*, doth use by prescription a high Prerogative, in laying Impositions upon all Merchandizes arriving within the Gulf, *Civitas Venetiorum* (saith Baltholus) *potest pro maritmeis mercibus Gabellas imponere, quia est Civitas in Mari situata: & Veneti* (saith Baldus) *ex consuetudine sunt domini maris Adriatici & possunt statuere super Gabellis maris*, wherein they observe a profitable and politique course; for upon the Commodities of other Nations which are of goods in their Commonwealth, they lay the easier Impositions, sometimes five, sometimes seven, sometimes ten, upon the hundred, which doth exceed the highest Imposition in England, five in the hundred at the least.

In the Low Countries the Impositions which they call Excizes, paid by the Retaylors of Wines and other Cōmodities, and not by the Merchant, are the highest in Christendome; and yet we perceive that people to thrive and grow rich withall, for an improved high rent doth so quicken the industrie of the Farmer, as he thriveth oftentimes better than his Neighbour who is a Freeholder and payeth no rent at all; howbeit, to draw Trade, and to invite all Nations to Commerce with them, and so to make their Country a Staple,

Store house, or Magizen of all Europe, they do set but easie rates upon Merchandizes imported, but when they once have gotten their commodities into their hands, if any Merchant will export the same again, hee shall pay a greater Custome.

The Grand Seignior of Turkie doth impose sometimes ten in the hundred, sometimes twenty in the hundred upon Merchant Strangers, who Trade into the Levant; and I could speak of his other Exactions and Impositions upon his Vassals, but that I think it not meet to compare that Region's Tyrant, to the Princes and States of Christendome.

I may remember at last, the Great Toll which the King of Denmark taketh of every Ship that passeth into the Sound, taking advantage of a narrow Straight between Elsinore and Copman Haven; whereas the King of England being the undoubted Lord of the Narrow Seas, between Dover and Callis, might take the like Toll if it pleased him, and by the same right might participate of the great gain of Fishing which the Busses of Holland and Zeland do make yearly upon the Coasts of Great Britain. 

Thus we see by this comparison, that the King of England doth lay but his little Finger upon his Subjects, when other Princes and States do lay their heavy loins upon their people: what is the reason of this difference? from whence commeth it? assuredly not from a different Power or Prerogative, for the King of England is as absolute a Monarch, as any Emperour or King in the world, and hath as many Prerogatives incident to his Crown: whence then proceedeth it? to what profitable cause may we ascribe it? certainly to 

divers causes profitable, and principally to these causes following. First, our King of England hath alwayes gone before, and beyond all other Kings in Christendome in many points of Magnificency, and especially in this, That they have alwayes had a more Rich and Royall Demean belonging to the Crown, I mean more large and Royall Patrimony in Lands and Rents, than ever any Christian King had before, or now hath at this day; for it is certain, that the Revenues of other Princes and States do principally consist in such Gabells, Impositions, and Exactions, as are before remembred, and not in *terra firma*, not in such a Reall and Royall Patrimony as hath ever belonged to the Crown of England, and therefore other Kings being lesse able to maintain their Estates, or more covetous in their own Nature, have laid heavier Burthens upon their Subjects, than ever the King of England hath layd, or will do, or hereafter hath need to do, God be blessed for it; the Kings of England have had the Princes' Portion spoken of before in 45 of Ezekiel, and therefore they had no need so to oppresse the people.

Again, we may ascribe this difference to the bounty and noble nature of our Kings, that they would never descend to those poor and sordid Exactions which other Princes and States do take of their Subjects, *Sordidum putandum est aurum quod ex lachrimis oritur*, as a good Counsellor told Vespasian.

Again, we may ascribe it to the wisdom and policy of our Kings, that they would never follow the Counsell of Rehoboam's younger Counsellors, *boni pastoris est oves tondere non diglubere*,

as Tiberius the Emperor was wont to say, *Odi hortulanum* (saith Alexander) *qui ab radice olera excindit ; qui nimis energit elicit sanguinem*, saith Solomon: they well considered that the money levied by Taxes and Impositions, is the blood of the people, which is not to bee let out in any great quantity, but to save the life, as it were, of the Common-wealth, when she is sick, indebted, and in great danger.

Again, it may be ascribed to their Piety and Religion which moved them to follow the counsell of the Divine Rule, Deut. 17. where the King is warned not to multiply upon him much Gold and Silver, for that indeed there doth seldome come good by great Treasure heapt up by a great Prince for it doth but nourish Pride and Ambition in him, and stir him up many times to make an unjust Warre upon his Neighbours; or if he leave it unto his Successors, it makes them luxurious and vitious, which draweth with it sometimes the ruin of the kingdome, *sed optimus & certissimus thesaurus Principis est in oculis subditorum*, saith the learned Buterus, in his Book against Machiavill, let the King, saith he, have a care to maintain Religion, and Justice, and Peace, in his Kingdom; this will soon bring plenty, with a continuall increase and make a rich and wealthy people; then shall the King never want money to serve his just, and necessary, and honourable occasions; for it is impossible the Sovereign should be poor when the Subjects are rich, and untill occasions do arise, the Coffers of his Subjects will be his best Exchequer; they will be his Treasurers, they will be his Receivers, his tellers without fees or wages; no bad Accomptant shall deceive him; nor no

Bankrupt Officer shall deceive him ; they will keep the Treasure of the Kingdom so frugally, as no Importunate Courtier shall be able to withdraw the same from a Prince, but that it shall still remain in store to supply the necessities of the Common wealth.

Lastly, our Kings of England in their wisdoms, well understood the natures and dispositions of their people, and knowing them to be a free, generous and noble Nation, held them not fit to be beaten with Rehoboam's Rod, and esteemed them too good to be whipt with Scorpions. And therefore God be blessed, we have not in England, the Gabeller standing at every Town's end ; we have not a Publican in every Market, we pay not a Gabell for every Bunch of Reddish, or Branch of Rosemary sold in Cheap-side, we have none of those Harpies which do swarm in other Countries, we have no complaining in the streets, as is said in the 144. Psalm ; and therefore I may well conclude with the conclusion of that Psalm, Happy are the people that are in such a case, blessed is the people that have the Lord for their God above in Heaven, and King James for their King here upon Earth.

Finis.



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II. STATE-PAPERS

ON

IRELAND.

1604-5—1610.

NOTE.

The sources of these State-Papers are given in their several places. After mature consideration I have deemed it expedient to cancel *verbatim et literatim* copy that I had personally prepared of the whole of these important Papers *i.e.* shewing all the arbitrary orthography, contractions, &c., &c., and to give them in our present form. For Sir John Davies' own spelling and the like, the abundant examples in his Letters in our Memorial-Introduction will probably be deemed sufficient; while it is all-important that such weighty State-Papers should be read with all possible ease and pleasantness. G.



I. OBSERVATIONS
TO THE
EARL OF SALISBURY,
TOUCHING THE
STATE OF MONAGHAN, FERMANAGH,
AND CAVAN IN ULSTER. 1604-5.*

My most honourable good Lord,

I AM not ignorant how little my advertisements do add unto your Lordship's knowledge of the affairs of this kingdom; forasmuch as I know your lordship doth receive such frequent dispatches from the Lord Deputy and Council here, as nothing worthy of any consideration is left by them unadvertise. Besides, they knowing things *a priori*, in that they see the causes and grounds of all accidents, can give your lordship more full and perfect intelligence, than such an inferior minister as I am, which come to understand things *a posteriori* only by the effect and by the success. Not-

*George Chalmers in his "Historical Tracts by Sir John Davis" (1787) has dated this '1607': but from the commencement of the next Paper, of which he was ignorant, it appears that 1604-5 must have been its date. Chalmers' notes at the close of these State Papers bear his initial (C). By collation of Sloane MS. 4793, I have corrected very many errors in Chalmers' text, here and elsewhere. G.

withstanding, because the diligence of others cannot excuse my negligence, if I omit duty in this behalf, I presume still to write to your lordship, and though I write the same things to your lordship, as are written by others, in substance; yet perhaps I may sometimes add a circumstance, which may give light to the matter of substance, and make it the clearer unto your lordship.

After the end of the last term, my Lord-Deputy took a resolution to visit three counties in Ulster; namely Monaghan, Fermanagh, and Cavan, which being the most unsettled and unreformed parts of that province, did most of all need his lordship's visitation at this time: for Monaghan, otherwise called M'Mahown's country, Sir William Fitzwilliams, upon the attainder and execution of Hugh Ro M'Mahown, chief of his name, did with good wisdom and policy divide the greatest part of that county among the natives thereof, except the Church Lands, which he gave to English servitors: in which division, he did allot unto five or six gentlemen sundry large demesnes, with certain rents and services; and to the inferior sort, several freeholds, and withal reserved a yearly rent unto the crown of four hundred and odd pounds; whereby that county seemed to be well settled for a year or two: notwithstanding the late rebellion, wherein the M'Mahowns were the first actors, reversed all that was done, and brought things in this county to the old chaos and confusion: for they erected a M'Mahown among them, who became master of all; they revived the Irish cuttings and exactions, detained the queen's rent, reduced the poor freeholders into their wonted slavery, and, in a word, they broke all the covenants and conditions con-

tained in their letters-patent, and thereby intituled the crown to resume all again ; they having now no other title to pretend, but only the late Lord Lieutenant's promise and the King's mercy. I speak of the chief lords and gentlemen, whose estates were subject to conditions ; albeit there was yet no office found of the breach of those conditions. But as for the petty freeholders, whose estates were absolute, many of them, whose names were yet unknown, were slain in the late rebellion ; and so attainted in law, if any inquisitions thereof had been taken. Of such as did survive the wars, and had their pardons, some were removed and transplanted by the tyranny of the lords, and some were driven out of the country, not daring to return to their freeholds, without special countenance of the State ; and thus stood the state of Monaghan.

Touching Fermanagh, otherwise called M'Guyres country ; that country was never reduced to the crown, since the conquest of Ireland, neither by attaindure, surrender, or other resumption whatsoever, until Sir John Perrott's government, who caused Coconaught M'Guyre (father of Hugh M'Guyre, who was a principal actor in the late rebellion, and slain in Munster, upon an encounter with Sir Warham St. Leger), to surrender all the country of Fermanagh in general words unto the late queen, and to take letters-patent back again, of all the country in the like general words, to him and his heirs ; whereupon was reserved a rent of one hundred and twenty beeves, arising out of certain horse and foot, and a tenure in *capite* : but this English tenure did not take away his Irish customs and exactions ; he was suffered still to hold

his title of M'Guyre, and to exercise his tyranny over the queen's poor subjects, of whom the State took no care, nor notice; albeit there are many gentlemen who claim estate of freehold in that country by a more ancient title than M'Guyre himself doth claim the chiefrie. Coconaught M'Guyre, having thus obtained letters-patent, died seized of the country; and after his death, Hugh M'Guyre, being his eldest son, took possession thereof, not as heir at common law, but as Tannist, and chief of his name, was created M'Guyre, and held it as an Irish lord until he was slain in actual rebellion, which we hold an attainder in law, in this kingdom.

Hereupon, an office being found that Hugh M'Guyre was killed in rebellion; one Connor Ro M'Guyre, whose ancestors had been chief lords of the country, and who, being received to grace, had performed good service in those parts, had a patent of the whole country granted unto him by the late Lord Lieutenant, and held it accordingly, during the wars. Howbeit, when young Coconagh M'Guyre, brother to Hugh M'Guyre, and second son to the old Coconagh, submitted himself to the late Lord Lieutenant, his lordship promised him to divide the country betwixt him and Connor Ro. In performance of which promise, the State here, by direction out of England, persuaded Connor Ro to surrender his patent, which he did, and thereupon set down a division of the country, allotting the greater portion to Coconagh; according to which division they have since held their several portions, but hitherto they have obtained no letters-patent, my Lord-Deputy having made stay thereof till he had seen and understood the state of the

country, and established a competent number of freeholders there, which will be more conveniently and easily effected now while the land is in his Majesty's disposition, than it would be, if these Irish lords had estates executed or past unto them. Upon these terms stood the estate of the chief lords of Fermanagh. But touching the inferior gentlemen and inhabitants, it was not certainly known to the State here, whether they were only tenants at will to the chief lords (whereof the uncertain cutting which the lords used upon them might be an argument), or whether they were freeholders yielding of right to their chief lord certain rents and services, as many of them do allege, affirming that the Irish cutting was but an usurpation and a wrong. This was a point wherein the Lord-Deputy and Council did much desire to be resolved, the resolution thereof would give them much light, how to make a just and equal distribution of the country, and to settle every particular inhabitant thereof. Thus much concerning the state of Fermanagh.

As for the Cavan, otherwise called Breny Orelve or O'Relies Country, the late troubles had so unsettled the possessions thereof, which indeed were never well distinguished and established, as it was doubtful in whom the chiefrie of that country rested, or if the chief lord had been known, yet was it as uncertain what demesnes, or duties he ought to have. And for the particular tenants, they were so many times removed and rejected, as their titles and possessions were as doubtful as the lords. True it is, that Sir John Perrott being deputy, purposed the reformation and settling of this country; and to that end indentures were

drawn between himself, in behalf of the late queen, on the one part, and Sir John O'Relie, then chief lord of the country, on the other; whereby Sir John O'Relie did covenant to surrender the whole unto the queen, and Sir John Perrott, on the other part, did covenant, that letters-patent should be made unto him of the whole. Howbeit, there followed no effect of this: for neither was there any surrender made by Sir John O'Relie, neither was there any patent granted unto him, during Sir John Perrott's time; marry afterwards, when the late lord Chancellor, and Sir Henry Wallop, were Lords Justices, certain commissioners were sent down to divide the country into baronies and to settle the chief Septs and families therein; which they did in this manner: The whole country being divided into seven baronies, they assigned two unto Sir John O'Relie, free from all public charges and contributions; a third barony they allotted to Philip O'Relie, brother to Sir John O'Relie; a fourth to Edmond O'Relie, uncle to Sir John O'Relie; a fifth to the sons of one Hugh O'Relie, surnamed the Prior: and out of the three baronies whereof Sir John O'Relie was not possessed, they reserved unto him a chief rent of ten shillings out of every poll (being a portion of land containing three score acres or thereabouts) in lieu of all Irish cuttings and taxes. As for the other two baronies possessed by the Septs of M'Rernon, and M'Gaurol, being remote and bordering upon O'Rorkes country, they were neglected and left subject still to the Irish exactions of the chief lord; but to the crown they reserved upon the whole country 220 beeves, which the deputy ever since hath taken for his

provision. This division, or establishment, was made and reduced to writing, as one of the commissioners, who is yet living, told me; who told me withal, that they were well paid for their pains: for he that had least had an hundred fat beeves given him by the country; yet cannot we find any return of this commission, either in the Council Book; or in the Chancery. So as hitherto there were only projects made for the settling of the country, but nothing was really and effectually done; none of the rules and ceremonies of the law observed, either by accepting surrenders, or regranting the land back again, or by any other lawful conveyance, or execution of estates. After this Sir John O'Relie died in rebellion; whereupon his brother Philip O'Relie took upon him the name of O'Relie and possessed himself of the country as Tannist and chief lord according to the Irish custom; and being so possessed, was slain in rebellion; after his death, Edmond O'Relie, his uncle, entered in like manner, and was killed in actual rebellion. Since the death of Edmond, none of that Sept was elected or created O'Relie, but the chiefrie of the country stood doubtful till the end of the wars: then a niece of the Earl of Ormond being the widow of Mulmora O'Relie (eldest son of Sir John O'Relie, which Mulmora had been always loyal, and was slain on the Queen's part), supposing that Sir John O'Relie held the country by grant, from the late queen (which indeed he never had), caused an inquisition to be taken, whereby it was found, that Sir John O'Relie was seized of the Country in fee, and died seized; after whose death, the country descended to Mulmora, who likewise died seized, his hire.

being within age and his majesty's ward; and thereupon she made suit to Sir George Cary, then Lord-Deputy, as well for the grant of the wardship, as for the assignment of her dower; whereas indeed, the land never descended, according to the course of the common law; but now was ever held by Tannis, according to the Irish custom, whereby there could grow neither wardships nor dower. For, the Tannist coming in by election, neither did his heir ever inherit, neither was his wife ever endowed. Howbeit, Sir George Cary, by a warrant from the Council Table only, did assign unto her the third part of the profit of the country, and gave her withal the custody of the body of her son, but the custody of the land during the King's pleasure he committed unto one Mulmora O'Relie, great uncle to the supposed ward, whereof the poor gentleman hath made little benefit, because not being created O'Relie by them, they would not suffer him to cut and exact, like an Irish lord, neither would they suffer him to receive the establishment made by the commissioners, because it had been broken and rejected by Philip and Edmond; who sithence held the country as Tannist, or Irish chieftains. In these uncertain terms, stood the possessions of Brevye, which we now call the county of Cavan.

I thought it not impertinent to show into your lordship how unsettled the possessions of these countries were, before my Lord-Deputy began his journey; that it may appear, how needful it was, that the Lord-Deputy should descend in person to visit those countries, whereby he might have opportunity to discover and understand the true and particular state, both of the possessions and

possessors thereof, before he gave warrants for passing the same by letters patent to any; and thereby prevent that error, which hath formerly been committed in passing all Tyrone to one, and Tyrconnel to another, and two large territories to Odogherly and Randal M'Sorley, without any respect of the King's poor subjects who inhabit and hold the lands under them; whereby the patentees are made little kings, or rather tyrants over them: insomuch as they being wooed and prayed by the State, cannot yet be drawn to make freeholders for the service of the Commonwealth, which, before the passing of their patents, they would gladly and humbly have yielded unto.

The state, therefore, of the three counties before named, standing in such terms as I have before expressed; my Lord-Deputy, accompanied with the Lord-Chancellor, the Lord Chief Justice, Sir Oliver Lambert, and Sir Garret Moore, and being also waited upon by myself, who was for this service joined in commission of assize and gaol delivery with the Chief Justice, began his journey the nineteenth day of July last, being Saturday, and lodged that night and the next at the Abbey of Mellifont, Sir Garret Moore's house. On Monday night his lordship camped in the field, upon the borders of Ferney, which is the inheritance of the Earl of Essex; and albeit we were to pass through the wastest and wildest parts of all the north, yet had we only for our guard six or seven score foot, and fifty or three score horse, which is an argument of a good time, and of a confident deputy. For in former times (when the State enjoyed the best peace and security) no Lord-Deputy did ever adventure himself into

those parts without an army of eight hundred or one thousand men. The third night after our departure from Mellifont, we came to the town of Monaghan, which doth not deserve the name of a good village, consisting of divers scattered cabins, or cottages, whereof the most part are possessed by the cast soldiers of that garrison. In the northmost part thereof there is a little fort, which is kept by the foot company of Sir Edward Blaney, who is Seneschal or Governor of that county by patent. In the midst of this village, there is a foundation of a new castle, which being raised ten or twelve feet from the ground, and so left and neglected for the space of almost two years, is now ready to fall into ruin again; albeit his Majesty's charge in building hath already been twelve hundred pounds at least. My Lord-Deputy was as much displeased at the sight thereof, as the chief lords of the country are pleased and comforted therewith; because if it were erected and finished in that form as was intended, it would at all times be a bridle unto their insolency: for the M'Mahouses undoubtedly are the most proud and barbarous sept among the Irish; and do ever soonest repine and kick and spurn at the English government. My Lord-Deputy having pitched his tents about a quarter of a mile from the town, did presently distinguish the business that was to be done; the determining of matters of the Crown, and the hearing of all personal petitions touching debt and trespass, he left wholly to the justices of assize and goal delivery; and reserved only to himself and the Lord-Chancellor the consideration of such petitions as should be made unto him, touching the lands and possessions of

that country ; which business, because it was the principal, and taken in hand by my Lord-Deputy himself, I will first trouble your Lordship with the relation thereof.

His Lordship first propounded to the inhabitants of the country, two principal questions in writing : viz. first, what lands they were at that instant possessed of ; and secondly, what lands they claimed, either by patent from the Crown, or by promise from the State. When they had given in their several answers to these questions, my Lord-Deputy thought meet to inform himself of the particular state of the country, by perusing the book of division made by Sir William Fitz-williams, which remaining among the rolls in the chancery, the Lord-Chancellor had brought with him of purpose for this service. By that book it did appear that the county of Monaghan was divided into five baronies, viz. Dartrey, Monaghan, Cremorn, Trough, and Donamayn. That these five baronies contain an hundred ballibetags, viz. Dartrey twenty-one, Monaghan twenty-one, Cremorn twenty-one, Trough fifteen, and Donamayn twenty-two. That every ballibetagh, which signifieth, in the Irish tongue, a town able to maintain hospitality, containeth sixteen taths ; every tath containeth three-score English acres or thereabouts : so as every ballibetagh containeth nine hundred and sixty acres : the extent of the whole country, containing one hundred ballibetags, is eighty-four thousand acres, beside the church land. All this country, albeit it were resumed and rested actually in the Crown by the act of attainder of Shane O'Neale, notwithstanding the M'Mahounes being still per-

mitted to hold the possession, no man sought to have any grant thereof until Walter Earl of Essex obtained the whole Barony of Donamayn (otherwise called the Ferry and Clankawell) to himself and his heirs; and afterwards upon the execution of Hugh Ro M'Mahoune, chief of his name, Sir William Fitzwilliams divided and disposed the other baronies in this manner: in the Dartrey, five ballibetaghs were granted in demesne unto Brian M'Hugh Oge M'Mahoune, then reputed chief of his name, and the heirs males of his body, rendering thirty pounds rent, viz. six pounds for every ballibetagh; the other sixteen ballibetaghs were divided among the ancient inhabitants of that barony; some having a great portion allotted, and some a less; howbeit every one did render a yearly rent of twenty shillings out of every tath, whereof twelve shillings and six pence was granted to Brian M'Hugh Oge M'Mahoune, as a chief rent, in lieu of all other duties, and seven and sixpence was reserved to the Crown, which plot was observed in every of the other baronies; so as out of every ballibetagh containing sixteen taths, the lord had ten pounds, and the King six.

In Monaghan, Rosse Bane M'Mahowne had likewise five ballibetaghs granted unto him with the like estate, rendering to the Queen 30*l.* rent, and the like chief rents as aforesaid, out of nine ballibetaghs more. And in the same Baronies Patrick M'Art Moyle had three ballibetaghs allotted unto him with the like estate, rendering 18*l.* rent to the Queen, and the like chief rent out of all the other four.

In Cremorn, Euer M'Collo M'Mahoune, who was the first of that name that entered into the late

rebellion, and is now farmer to my Lord of Essex of all his land in that country, had five ballibetaghcs in demesne, granted unto him and the heirs male of his body, rendering 30l. rent to the Crown, and the like chief rent out of twelve other ballibetaghcs: and in the same barony one Patrick Duffe M'Collo M'Mahoune had two ballibetaghcs and a halfe assigned to him in demesne, rendering 15l. rent, and the like chief rent out of two other baronies and a half.

In the Trough, containing only fifteen ballibetaghcs, Patrick M'Rena had three ballibetaghcs, and twelve taths in demesne, given unto him with the like estate, rendering 22l. rent as aforesaid, and the like chief rent out of seven other ballibetaghcs: and the same barony, one Brian Oge M'Mahoune, brother to Hugh Ro, who was executed, had the like estate granted unto him in three ballibetaghcs, rendering 18l. rent in like manner, and the like chief rent out of two other ballibetaghcs: and under this condition, that if the patentee, or the assigns, did not within five years build a castle upon some part of the land contained in their patents, their several grants to be void.

Thus it appeared, that those four baronies were then bestowed among the chief lords or gentlemen of that country: and as they had their demesnes and rents allotted unto them; so the inferior inhabitants, which were so many in number, as it is not fitt to trouble your Lordship with the list of their particular names, were all named in the book of division, and had their several portions of land granted unto them and to their heirs. Howbeit, the estates made to those petty freeholders were not subject to any conditions to

defeat the same, but only to a *nomine pæne* for non payment of their several rents: whereas in every grant made to the lords there was a threefold proviso, viz. that if any of them took upon him the name of M'Mahoune; or did fail of payment of the Queen's rent, or entered into rebellion, and were thereof attainted, their letters-patent should be void.

Thus the temporal lands were disposed. For the church land; the abbey of Clunys, which was the only abbey of any value in that county, was formerly demised to Sir Henry Drake, for years: but the rest of the spiritual lands, which the Irish call Termons, they were granted to sundry servitors, rendering ten shillings to the crown for every tath, which out of all the church land amounted to £70 per annum, or thereabouts: but as well these patentees, as the former, did all fail in their performance of the conditions, whereupon their several estates depended; so as there wanted nothing but an office to be found thereof for the making void of all their patents. And therefore as soon as the state of the possessions of this country did appear unto my Lord Deputy to stand in such sort as is before expressed, his Lordship forthwith commanded me to draw a special commission, directed among others to the Chief Justice: and myself, to enquire, as well of the breach of the conditions contained in the grants beforementioned, as also of all escheated and concealed lands in that county: Accordingly, the commission was drawn and sealed in the haniper, in the execution whereof we impannelled as many of the patentees themselves as appeared at that sessions to enquire of the articles

contained in the commission : So as they themselves found their own letters-patent void, some for non-payment of the King's rent, and others, for not building of castles within the time prescribed ; besides, they found divers of the inferior freeholders to have been slain in the late rebellion, wherby eight or nine ballibetags were escheated to the crown, every ballibetagh (as I said before) containing nine hundred and sixty acres, or thereabouts ; which office being found, there rested in the possession of the crown the greatest part of that county. This being done, my Lord-Deputy entered into council in what manner he might best dispose and re-settle the same again, according to his instructions received out of England in that behalf : Wherein albeit his Lordship did resolve to determine of nothing finally before his return to Dublin, where with the rest of the council, he proposed to digest all the business of this journey ; yet having an intent to make some alterations of the former division, his Lordship acquainted the principal gentlemen and lords therewith, moving them to give their free consents thereunto ; to the end that those small alterations might not breed any difference or discord among them : and thereupon his Lordship did in a manner conclude that Brian M'Hughe Oge should be restored to all that he had by the former division, except one or two ballibetags, which he was well contented should be disposed to two young children, his near kinsmen, for which he was promised to receive recompence out of the lands escheated within his barony ; that Patrick M'Art Moyle should likewise be restored *in integram* ; howbeit he was not well contented therewith,

allegding that my Lord Lieutenant, when he received him into grace, promised to make him equal in possessions with Brian M'Hugh Oge ; but my Lord-Deputy found no easy way to perform that promise, notwithstanding his Lordship designed unto him one ballibetagh more, being a parcel of the barony of Trough, which, lying upon the border of Tyrone, hath been possessed of late by the Earl, who pretended that it is parcel of his country : That Rosse Bane M'Mahoune should likewise be re-established in all his former possessions, one ballibetagh excepted, which he frankly gave to one of his kinsmen, who was forgotten in the last division : That Patrick M'Kenna and Bryan Oge M'Mahoune should hold all their lands and rents without any alteration at all. But the greatest change was to be made in the barony of Cremorn, the greatest part whereof was, by the former division, assigned to Euer M'Collo, who, notwithstanding, never enjoyed any part thereof : because one Art M'Rorie M'Mahoune, an active and desperate fellow, who had a very small portion given him by Sir William Fitzwilliams, making claim to that whole barony, did ever since with strong hand withhold the possession thereof from Euer M'Collo ; therefore, not without consent of Euer himself, his Lordship assigned to Art M'Rorie five ballibetaghs in that barony : And because a place called Ballilargan, containing two ballibetaghs, lieth in the midway between Monaghan and the Newrie, which two towns are distant the one from the other twenty-four miles, and forasmuch as Monaghan, being an inland town, cannot be supplied with victuals but from the Newrie, and that it is a matter of great difficulty in time of

war to convey victuals twenty-four miles, having no place of safety to rest in by the way, therefore his Lordship thought it very necessary for the service of the State to reserve those two ballibetags, and to pass some estate thereof to the governor of Monaghan, who doth undertake within short time to build a castle thereupon at his own charges.

These seven ballibetags being resumed from Euer M'Collo, he hath yet allotted to him and his sons in demesne, and in cheffie, ten ballibetags or thereabouts: albeit Patrick Duffe M'Collo, his kinsman, doth still hold his five ballibetags according to the first division; This resumption was made upon Euer M'Collo for two causes; first, in regard the State shall now put him in quiet possession of a good part of the barony; whereas before he did not enjoy any part thereof; secondly because he holdeth a whole barony in farm from my Lord of Essex, wherein he hath so good a pennyworth, as he is grown since the wars to be of greater wealth, than all the rest of his name besides.

Thus much was intended for the principal gentlemen, and lords of the country; as for the petty freeholders; such of them as have survived the wars, and not being attainted have been since pardoned, do own good estates in law still, and need only to be established in their several possessions; all which his Lordship hath a purpose to do by a general order: but the lands of such as were slain in rebellion, his Lordship allotted two or three ballibetags thereof, lying in the barony of Monaghan, unto divers cast soldiers dwelling in that poor town, which will be a good strength to that garrison; the remnant being scattered in the other baronies, his

Lordship hath disposed to such of the inhabitants, as were commended for their inclination to prove civil and loyal subjects. Lastly, the patentees of the spiritual, or termon lands, making suit to his lordship to be restored to their several portions granted unto them upon the former division, his Lordship thought fit to extend the like favour unto them, as he had done to the Irish. And this is the effect of that business, which his Lordship reserved unto himself, wherein his Lordship doth make this a year of Jubilee to the poor inhabitants of this county of Monaghan, because every man shall return to his own house, be restored to his ancient possessions, and withal have the arrear of rent to the King remitted, which is indeed a great matter; for the arrear of this counnry doth amount to 6000l. at least.

Touching the service performed in this country by the justices of Assize: albeit they found few prisoners in the goals, the most part being bailed by Sir Edward Blaney, to the end the fort where the goal is kept might not be pestered with them; yet when such as were bailed came in upon their recognizances, the number was greater then we expected. One grund jury was so well chosen, as they found with good expedition all the bills of indictment true; but on the other side, the juries, that were impannelled for trial of the prisoners, did acquit them as fast, and found them not guilty, which whether it were done for favour, or for fear, it is hard to judge: for the whole county, consisting of three or four names only, namely, M'Mahoun, M'Kena, M'Cabe, and O'Connaly, the chief was ever of one of those names, and of these names his jury did consist;

so that it was impossible to try him but by his kinsmen, and therefore it is probable that the malefactors were acquitted for favour: but on the other part, we were induced to think, that fear might be the cause; forasmuch as the poor people seemed very unwilling to be sworn of the juries, alledging, that if they condemned any man, his friends in revenge would rob, or burn, or kill them for it; and that the like mischief had happened to divers jurors since the last session holden there: such is the barbarous malice and impiety of this people. Notwithstanding, when we had punished one jury with good round fines and imprisonment, for acquitting some prisoners, contrary to direct and pregnant evidence, another jury being impannelled for trial of others, found two notorious malefactors guilty: whereof one was a notable thief, and the other a receiver of thieves; both which were presently executed, and their execution struck some terror in the best men of the country; for the beef, which they eat in their houses, is for the most part stolen out of the English pale; and for that purpose, every one of them keepeth a cunning thief, which he calleth his Cater. Brian Oge M'Mahoune, and Art M'Rorie, two of the principal gentlemen before named, were indicted for the receiving of such stealths; but they acknowledging their faults upon their knees before my Lord-Deputy, had their pardon granted unto them; so that I believe stolen flesh will not be so sweet unto them hereafter.

When we had delivered the gaol, we impannelled another jury, to enquire of the state of the church in that county; giving them these special articles

in charge, viz. how many parish churches there were in that county; who were patrons; who were incumbents; which of the churches were sufficiently repaired; and what decayed; of what yearly value they were; what glebe, tythes, or other duties belonged unto every church; and who took the profits thereof.

This we did by virtue of that great commission which was sent out of England about twelve months sithence, whereby the commissioners have authority, among other things, to enquire of these points; and thereupon to take order for the re-edifying and the repairing of the churches, and for the placing of sufficient incumbents therein. This point of that commission was not before time put in execution any where, albeit it was sundry times moved at the council table, that somewhat might be done therein; but my Lords the Bishops that sit at the board, being not very well pleased that laymen should intermeddle with ecclesiastical matters, did ever answer that motion in this manner: Let us alone with that business; take you no care for that; we will see it effected, we warrant you: notwithstanding there hath been so little care taken, as that the greatest part of the churches within the pale lie still in their ruins; so as the common people (whereof many without doubt would conform themselves) have no place to resort unto, where they may hear divine service. This consideration moved us to enquire of the state of the church in these unreformed counties. The inquisition presented unto us in this county was in Latin, because the principal jurors were vicars and clerks: it appeared, that the churches for the most part are utterly waste; that the King is patron of

all ; and that the incumbents are Popish priests, instituted by Bishops authorized from Rome ; yet many of them, like other old priests of Queen Mary's time, in England, ready to yield to conformity.

When we had received this particular information, it was thought meet to reserve it, and to suspend and stay all proceedings thereupon until the Bishop of Derry, Raphoe, and Clogher (which three dioceses comprehend the greatest part of Ulster, albeit they be now united for one man's benefit) shall arrive out of England, whose absence, being two years since he was elected by his Majesty, hath been the chief cause that no course hath been hitherto taken to reduce this poor people to Christianity ; and therefore *majus peccatum habet*.

Lastly, for the civil government of this county we made several orders : first, for the building of, a gaol and sessions house, we imposed a tax upon the country (by consent of the chief gentlemen and freeholders) of £40. sterling, and for the surplusage of the charge, we moved my Lord-Deputy and Council to promise an allowance out of the fines and casualties of that countty : next, for the erecting of a free-school, and maintenance of a school-master in Monaghan, we prevailed with the chief lords so far as they yielded to contribute £20 a year to that use : finally we revived and enlarged sundry former orders, made for the mending of high ways, clearing of paces [=paths] and the bringing of lazy and idle men to justice, &c.

This is the effect of all our proceedings in the county of Monaghan.

From Monaghan we went the first night to the ruins of the Abbey Clunys, where we camped ;

and passing from thence through ways almost impassible for our carriages, by reason of the woods and bogs, we came the second night after to the south side of Lougherne, and pitched our tents over against the island of Devonish, a place being prepared for the holding of our sessions for Fermanagh in the ruins of an abbey there. Here my Lord Deputy distinguished the business, as he had formerly done, in the county of Monaghan; reserving unto himself the disposition and settling of the lands of inheritance; and leaving unto us the ordinary matters both criminal and civil.

For the lands of inheritance in Fermanagh they stood not in the same terms as the lands in Monaghan: for the Seignory, or Chiefry, and the demesne lands that were the inheritance of M'Guyre himself, were reduced, and rested in the Crown, by two several inquisitions, found after the death of Hugh M'Guyre, the arch-rebel, of whom I have spoken before, the one found in Munster, (where shortly after he was slain in actual rebellion) there by special commission; and the other, in Fermanagh, by the late Lord Chief Baron, by virtue of his office as Chief Baron, two years sithence, when he was justice of assize in that county; both which offices are returned and remain on record; the one in the Chancery, and the other in the Exchequer. But forasmuch as the greatest part of the inhabitants of that country did claim to be freeholders of their several possessions, who surviving the late rebellion had never been attainted; but having received his Majesty's pardon, stood upright in law, so as we could not clearly intitle the Crown to their lands, except it were in point of conquest, a title which the State

here hath not at any time taken hold of for the King against the Irish, which upon the conquest, were not dispossessed of their lands, but were permitted to die, seized thereof in the King's allegiance; albeit they hold the same, not according to the course of the common law, but by the custom of Tannistry, whereby the eldest of every sept claimed a chieffy over the rest, and the inferior sort divided their possessions after the manner of Gavelkind. Therefore it was thought meet to impanel a jury of the most sufficient inhabitants, to enquire and present how many freeholds there were, and what lands they held in this county, and what certain rents and services they yielded to the M'Guyres, or other chieftains and tannists in ancient time. Though this were a business of some labour, because the custom of Gavelkind had made such petty fractions and divisions of the possessions of this country, as the number of freeholders was exceedingly great, yet within two days they brought in their inquisition, in Irish; which being translated into English, appeared to be confused in general, and without method; wherewith my Lord-Deputy not being satisfied, his Lordship having taken a resolution to visit the fort and castle of Ballishannon in Tirconnel, being situate on the north-west end of Lough Earne, and not distant from our camp above twenty English miles, commanded me, in the meantime of his Lordship's absence, to call the grand jury, who had made the former presentment, and with them the chief inhabitants of every barony, and, by conference with them, to digest the business against his return, which was done in this order.

First, we thought meet to distinguish the

possessions; next, to enquire of the particular possessors thereof. Touching the possessions, we found Fermanagh to be divided into seven baronies, namely, Magherry Boy, Clanauley, Clankelly, Magherry Stephanagh, Tirecannada, Knockninney, and Turath. Every of these baronies containeth seven ballibetaghs and a half of land, chargeable with M'Guyre's rent and other contributions of the country; every ballibetagh is divided into four quarters of lands, and every quarter into four taths: so a ballibetagh containeth sixteen taths, as it doth in Monaghan; but the measure of this country is far larger, besides the free land, whereof there is good quantity in every barony, is no parcel of the seven ballibetaghs and a half whereof the barony is said to consist. For these reasons, Fermanagh, containing but fifty-one ballibetaghs and a half of chargeable lands, is well-nigh of as large an extent as Monaghan, which hath in it an hundred ballibetaghs.

Touching the free land we found it to be of three kinds; Church land, or Termon land, as the Irish call it. Secondly, the Mensall land of M'Guire. Thirdly, lands given to certain septs privileged among the Irish, viz. the lands of the Cronicles, Rimers, and Galloglasses.

The Church land was either Monastery land, Corbe land, or Herinachs land: for it did not appear unto us, the bishop had any land in demesne, but certain Mensall duties of the Corbes and Herinachs; neither did we find the parsons and vicars had any Glebe lands at all in this country.

For the Monastery land, we found no other than that which belonged to the Abbey of Lesgole, which doth not exceed the quantity of two ballibetaghs,

and lieth for the most part in the Barony of Clanawley

But the lands belonging to the Corbes and Herinachs, are of a far greater quantity, and are found in every barony. I had heard of the name of a Corbe and of an Herinach divers times since I came into this kingdom, and would gladly have learned of our clergymen at Dublin, what kind of religious persons they were; but could never be satisfied by any; and therefore at this time, I was the more curious and inquisitive to inform myself of these ecclesiastical persons, the like whereof are not to be found in any other part of Christendom, nor in Ireland neither, but only in the countries that are mere Irish: when therefore we came to enquire of the quantity of the termon lands, and I called unto me one of the best learned Vicars in all the country, and one that had been a Brehon, and had some skill in the civil and common laws, and with much ado I got from him thus much light for the understanding of this matter. They told me that the word *Termon* doth signify, in the Irish tongue, a *liberty*, or *freedom*, and that all Church-lands whatsoever are called *Termon-lands* by the Irish; because they were ever free from all impositions and cuttings of the temporal lords, and had the privilege of sanctuary; so as no temporal serjeant, or officer, might enter to arrest any person upon these lands, but the bishops only; howbeit in common understanding among us that are English, we call such only *Termon-lands* as were in the possession of Corbes, or Herenachs. For the name of Corbe, I could not learn that it had any signification in the Irish tongue; some call him in Latin *Converbius*, but

such as are of best understandings call him *Plebanus*, and they yield the reason of that name *Quia plebi ecclesiasticæ præest*. I collect by that which they tell me, that he was a prior, or a resident of a Collegiate church; for, he did not only possess a good quantity of glebe-lands, the tenants and occupiers whereof were called Termon men, and had privilege of clergy, but he had also some rectories appropriate, whereof he had that portion of tythes, which belonged to the parson, and had withall the presentation of the Vicarage. He had always his place or seat in a mother church where he had a certain number of priests serving with him; in the cathedral church he had a stall in the choir, and a voice in the chapter: and this corbship is named a dignity in the register at Rome; for all dignities in cathedral churches and all benefices of value in this kingdom, are contained in a register at Rome; and the Pope at this day doth collate unto them; and until this day the persons presented have enjoyed the benefices, in this meer Irish country, by colour of the Pope's collation: lastly, this corbship was in a manner hereditary; for though the Corbe were ever in orders, yet was he in this Irish country usually married, or if he were not married, he had children, and after his death, if any of his sons were qualified with learning, he was chosen by the Dean and Chapter to be Corbe; and if none of his sons were capable, another of that Sept or surname was chosen. Without doubt these corbships, being in the nature of collegiate churches, are vested in the crown by the statute of dissolution of monastries; and accordingly some of them have been reduced into charge; but there are many

yet many whereof no inquisition hath been found, but concealed as detained by the Irishry unto this day. And, that your Lordship may perceive I weave not this web out of my own brain, but that I have authority for that which I deliver, I will here insert a certificate in Latin, made unto me by an Irish Scholar, whose opinion I required in this matter, which by chance I have now among my papers; for the most part of these things I have set down, out of my own memory, being now at Waterford, and having left the notes of our former journey at Dublin.

The scholar's opinion was this: "*Corban atus sive plebanatus dignitas est; et modo ad Regem pertinet, sed antea ad Papam; in matrici Ecclesia debet necessario esse, initiatus sacris ordinibus, omnesque decimas pertinentes ad hanc debet habere et beneficia adjuncta huic ipsius sunt eorumque conferentiam habet et presentationem. Dictum hoc nomen, quia populo et plebi ecclesiasticæ matricis Ecclesiæ præfuit. Certum numerum sacerdotum quasi collegialium debet habere secum, primum stallum in sua ecclesia habet. Habet etiam stallum vacuum in Ecclesia Cathedrali, et vocem in omni capitulo, tam publico, quam privato, inscribitur Romano Registro, ideoque dignitas est.*"

Of these Corbships, the best in these parts was at Clonays, in the county of Monaghan, which M'Mahoune himself procured to be conferred upon his eldest son, being but a boy, in the time of the late rebellion: It was long before granted unto Sir Henry Duke for years, and is now in the possession of Sir Francis Rushe, who married one of Sir Henry Duke's daughters. There is another at Derough, in

Fermanagh, which is likewise brought into charge. There are others in O'Rourke's country; others in upper Ossory, and in Ormound; and in many other places, which are not yet discovered. Thus much touching the name and nature of a Corbe.

For the Herinach, there are few parishes of any compass in extent, where there is not an Herinach, which being an officer of the Church, took beginning in this manner: When any lord or gentlemen had a direction to build a church, he did first dedicate some good portion of his land to some saint or other whom he chose to be his patron; then he founded the church, and called it by the name of that saint; and then gave the land to some clerk not being in orders, and to his heirs for ever, with this intent that he should keep the church clean and well repaired, keep hospitality, and give alms to the poor for the soul's health of the founder. This man and his heirs had the name of Errinagh. The Errinagh was also to make a weekly commemoration of the founder in the church. He had always *Primam Tonsuram*, but took on other orders; he had a voice in the Chapter, when they consulted about their revenues, and paid a certain yearly rent to the Bishop, besides a fine upon marriage of every one of his daughters, which they call a Loughimpy, he gave a subsidy to the Bishop at his first entrance into his bishoprick. The certainty of all which duties appear in the Bishop's register, and these duties grew unto the Bishop: first, because the Herinach could not be created, nor the church dedicated without the consent of the Bishop. We are yet doubtful whether these lands possessed by the Herinaghs, be yet reduced to the Crown, because the statute of Chaun-

teries is not yet enacted in this kingdom ; but certain it is, that these men possessed all the Glebelands, which belong yearly to such as have care of souls : and therefore, when they shall be resumed, it were meet they should be added to the parsonages and vicarages, whereby they may be found competent livings for able ministers, which may be placed hereafter in these parts ; for now albeit there be in every parish both a parson and a vicar, yet both their livings, being put together, are not sufficient to feed an honest man. For the tythes of every parish within the diocese of Clogher, which comprehendeth Monaghan and almost all Fermanagh, are divided into four parts, whereof the parson being commonly no priest, hath two parts ; the vicar, who is ever a priest and serveth the cure, hath one fourth part ; and the bishop hath another fourth part, which God knoweth in these poor waste countries doth arise to very small portions. And thus we found the state of the Churchland in this county.

Touching M'Guyre's Mensall lands, which were free from all common charges and contributions of the country, because they yielded a large proportion of butter and meal, and other provisions for M'Guyre's table ; albeit the jury and other inhabitants did set forth these Mensall lands in certainty, which lying in several Baronies, did not in quantity exceed four Ballibetags, the greatest thereof being in the possession of one M'Manus and his sept, yet touching the certainty of the duties or provisions yielded unto M'Guyre out of these mensall lands, they referred themselves unto an old parchment roll, which they called an indenture, remaining in the hands of one O'Brislan,

a chronicler and principal Brehon of that country : whereupon O'Brislan was sent for, who lived not far from the camp, but was so aged and decrepid, as he was scarce able to repair unto us. When he was come, we demanded of him the sight of that ancient roll, wherein, as we were informed, not only the certainty of M'Guyre's mensall duties did appear, but also the particular rents and other services, which were answered to M'Guyre out of every part of the country. The old man seeming to be much troubled with this demand, made answer, that he had such a roll in his keeping before the war, but that in the late rebellion, it was burned among other of his papers and books, by certain English soldiers. We were told by some that were present, that this was not true ; for they affirmed that they had seen the roll in his hands since the war : thereupon my Lord Chancellor (being then present with us ; for he did not accompany my Lord-Deputy to Ballishannon, but staid behind in the camp) did minister an oath unto him, and gave him a very serious charge to inform us truly what was become of the roll. The poor old man fetching a deep sigh, confessed that he knew where the roll was, but that it was dearer to him than his life ; and therefore he would never deliver it out of his hands, unless my Lord Chancellor, would take the like oath, that the roll should be restored unto him again : my Lord Chancellor smiling, gave him his word and his hand that he should have the roll redelivered unto him, if he would suffer us to take a view and a copy thereof : And thereupon the old Brehon drew the roll out of his bosom, where he did continually bear it about him. It was not very

large, but it was written on both sides in a fair Irish character; howbeit, some part of the writing was worn and defaced with time and ill keeping. We caused it forthwith to be translated into English, and then we perceived how many vessels of butter, and how many measures of meal, and how many porks, and other such gross duties, did arise unto M'Guyre out of his mensall lands; the particulars whereof I could have expressed, if I had not left the translated copy of the roll at Dublin; but these trifles are not worthy to be presented to your Lordship's knowledge. It is sufficient to shew of what *qualis* those mensall duties are; and for the quantity thereof, though it were great, in respect of the land out of which these provisions were taken, which being laid altogether doth not exceed four ballibetagh (as I said before) yet such commodities in those parts, are of little or no value, and therefore he never made any civil use of them, but spent them wastefully in a sordid and barbarous manner, among his loose and idle followers. Beside these mensals, M'Guyre had 250 beeves, or thereabouts, yearly paid unto him out of all the 7 baronies, and about his castle of Enniskillen he had almost a ballibetagh of land, which he manured with his own churles, and this was M'Guyre's whole estate in certainty, for in right he had no more, and in time of peace he did exact no more. Marry, in time of war he made himself owner of all, cutting what he listed, and imposing as many bonaghtes, or hired soldiers, upon them, as he had occasion to use: for albeit Hugh M'Guyre that was slain in Munster were indeed a valiant rebel, and the stoutest that ever was of his name: notwithstanding generally the natives of this county are reputed the worst

swordsmen of the North, being rather inclined to be scholars or husbandmen, than to be kerne, or men of action, as they term rebels in this kingdom ; and for this cause M'Guyre in the late wars did hire and wage the greatest part of his soldiers out of Connaught, and out of the Brenie O'Relie, and made his own countrymen feed them, and pay them ; and therefore the jury enquiring of Escheates, found only two freeholders in this county, besides Hugh M'Guyre himself, to have been slain in the late rebellion. Hereby your Lordship may perceive what manner of Lord M'Guyre should have been, and what means and power he should have had to do hurt, if the State here had in former times but looked into the state of this country, and had established the English laws and justice among them, whereby every man might have enjoyed his own : and your lordship may likewise conjecture of what greatness the best of his surname will be, when the chieffy of this country shall be divided between two M'Guyres, and the freeholders shall be established in their several possessions without any dependency upon the Lords, paying only their certain rents and duties. Assuredly these Irish Lords appear to us like glow worms, which afar off seem to be all fire ; but, being taken up in a man's hands, are but silly worms : and yet this young Coconaught M'Guyre (whose brother Hugh was the alpha, and himself the omega of the last rebellion : for Hugh was the first that went out, and himself the last that came in), will in no wise be satisfied with the greatest part of the chieffy of his country ; such is the pride of his own heart and such is the encouragement he receives from some of place and power in this kingdom : and to the end he might be thought a

person fit to be pleased with extraordinary good terms, he gave out a false alarm, some few days before our coming into Fermanagh, that himself with the Earl of Tirconnel were going into Spain; a common and poor Irish policy practised in this realm, ever since the conquest, to amuse the State with rumours, that are utterly false, which notwithstanding, former times, hath prevailed to do hurt in this kingdom, according to the observation and saying of the old Cardinal of Loraine, *that a lie, believed but for an hour, doth many times produce effects of seven years continuance.* I have digressed a little too much in this place, for which I humbly crave pardon, if your Lordship shall not think it pertinent to this discourse, wherein I meant to set forth the quality and quantity of M'Guyres men-sall duties.

Concerning the free lands of the third kind, namely, such lands as are possessed by the Irish officers of this country, viz. croniclers, galloglasses, and rimers, the entire quantity if it were laid together as it is scattered in sundry baronies, doth well nigh make two ballibetags, and no more; which land in respect of the persons that merit no respect, but rather discountenance from the State,—for they are enemies to the English government,—may perhaps be thought meet to be added to the demesne lands of the chief Lords.

In this manner we distinguished the possessions of Fermanagh, which being drawn into method, we presented to my Lord-Deputy upon his return.

For the several possessors of all these lands, we took this course to find them out, and set them down for his Lordship's information: we called unto us the inhabitants of every barony severally; begin-

ning with the barony of Magherie Boy, wherein we camped ; and so calling one barony after another, we had present certain of the clerks or scholars of the country, who know all the septs and families, and all their branches, and the dignity of one sept above another, and what families or persons were chief of every sept, and who were next, and who were of a third rank, and so forth, till they descended to the most inferior man in all the baronies : moreover, they took upon them to tell what quantity of land every man ought to have by the custom of their country, which is of the nature of gavel kind, whereby, as their septs or families did multiply, their possessions have been from time to time divided and sub-divided, and broken into so many small parcels as almost every acre of land hath a several owner, which termeth himself a Lord, and his portion of land his country : notwithstanding as M'Guyre himself had a cheifry over all the country, and some demesnes, that did ever pass to him only who carried that title ; so was there a chief of every sept, who had certain services, duties, or demesnes, that ever passed to the Tanist of that sept, and never was subject to division. When this was understood, we first enquired whether one or more septs did possess that barony, which we had in hand ; that being set down, we took the names of the chief parties of the sept or septs that did possess the baronies, and also the names of such as were second in them, and so of others that were inferior unto them again, in rank and in possessions.

Then, whereas every barony containeth seven ballibetags and a half, we caused the name of every ballibetagh to be written down, and thereupon

we made inquiry what portion of land, or services, every man held, in every ballibetagh; beginning with such first, as had land and services; and after naming such as had the greatest quantity of land, and so descending unto such as possess only two Taths, there we staid, for lower we could not go; because we knew the purpose of the State was only to establish such freeholders as were fit to serve on juries; at least we had found by experience in the county of Monaghan, that such as had less than two taths allotted unto them had not 40s. freehold per ann. ultra repris.; and therefore were not of competent ability for that service: and yet, the number of freeholders named in this county was above 200.

And in this order and method we digested the business, touching the possessions and possessors of this county of Fermanagh, which we presented to my Lord-Deputy upon his return from Ballyshannon. His Lordship having received it, and taken some consideration of it, called the principal inhabitants before him in the camp: told them that he came on purpose to understand the state of every particular man in that country, to the end he might establish and settle the same, according to his Majesty's directions out of England, and that he had received some information thereof, which gave him some good satisfaction; howbeit that he would not suddenly take any final order touching the same, but would resolve what was fit to be done, and finish this service the next term at Dublin. His Lordship's speech and good demonstration to the people, gave them great contentment.

It remains I should inform your Lordship, somewhat of the service performed by the Justices of

Assize in this county : albeit they had little to do here, no matter being prepared for them to work upon : for the gaol-delivery must needs be quickly dispatched, where there were no justices of peace that had either the will, or the skill to commit malefactors, and where there was no gaol of any fastness to keep them, being committed : howbeit we had full appearance of all the country, and there came in upon recognizances taken unskilfully enough by the Sheriff and other Irish Justices of peace, twenty persons in number or thereabouts ; the greatest part whereof were loose and idle people bound over to find masters or sureties for their behaviour ; others were committed for felonies, whereof some few were indited, but in the end all were acquitted for want of evidence, which happened by the negligence of the justices of peace, who had not bound their accusers to prosecute against them. We rebuked the justices of peace for this omission, and imposed fines upon them ; and so ended our gaol-delivery. Then made we the like inquisition here, touching ecclesiastical livings, and published the like orders for the civil government of their county, as we had done in Monaghan, and so dissolved our sessions. The erecting of a free school in this county was deferred till the coming of the Bishop of Clogher. The building of a gaol and sessions house was likewise respite until my Lord-Deputy had resolved of a fit place for a market and a corporate town ; for the habitations of this people are so wild and transitory, as there is not one fixt village in all this county. His Lordship took a view of two or three places for that purpose, of which he conceiveth the Abbey of Lesgole to be the fittest ; and I con-

jecture, that the next term, when the principal gentlemen of this country shall repair to Dublin to settle their estates, his Lordship will make choice of that place for the shire town of this county, and then take order for the erection of a gaol, and house of sessions there.

Having spent six or seven days in this waste country, we raised our camp, and returned the same way, which we had passed before, into the county of Monaghan, and lodging the second night not far from the Abbey of Clonays, we came the third day to Cavan, and pitched our tents on the south side of that poor Irish town. The appearance of this place was very full, for not only the natives of the county of Cavan, but also, many inhabitants of Westmeath and other parts of the pale bordering upon this country—whereof some pretended title to land, other came to demand debts, and others to give evidence against felons—repaired to this sessions, the chief of which was the Baron of Delvyn, who came attended with many followers.

My Lord-Deputy having a purpose to pursue the same course in the service here, which had been holden in the other two counties, caused forthwith a commission to be drawn and passed the Seal, whereby the Judges of assize and others, were authorised to enquire of all lands escheated to the crown in this country by attainder, outlawry, or actual killing in rebellion of any person: or by any other means whatsoever. For the dispatch of this business, a jury was impannelled of the best Knights and Gentlemen that were present; whereof some were foreign inhabitants of the pale; and, yet freeholders of this county; and the rest were

the chief of every Irish Sept, natives of this county. We received two presentments from them: the first of sundry freeholders, who were slain in the atel rebellion, and of such lands as they were severally seized of at the same time of their killings; the second was that Philip O'Relie, who was according to the custom of the country, created O'Relie, and was Lord or Chieftain of the whole country, being seized of all lands, tenements, and hereditaments in Breny O'Relie, *in Dominico suo ut de foedo & jure* (for these are the words of the inquisition) was slain in actual rebellion: and again they found that after the death of Phillip, one Edmund O'Relie was, after the like custom of the country, created O'Relie, and was in like manner seized of the country; and being so seized, was slain in rebellion; also they found lastly, that Sir John O'Relie, who was Chieftain and Tannist of the Country, long before Phillip and Edmond, did adhere to the Earl of Tyrone, and other rebels; and died an actual rebel against the crown. This inquisition was found with some difficulty, because the jurors themselves, all claiming and pretending to be freeholders of land within that country, were jealous lest their particular freeholds might be found escheated by this office; because, in time of rebellion, these Lords or Chieftians, by their Irish cuttings and exactions took the profits of the whole of the country at their pleasure, and so might be said to be seized of all the country in demesne, when they were slain in rebellion: But some of the jury being learned in the law, informed the rest, that by the words *in dominico suo ut de foedo & jure*; not only lands in demesne, or possession, but a seniory or chiefry may be understood, and there-

upon they were content to put their seals to the Inquisition, which being drawn and engrossed in parchment, by one of the Commissioners, was presented unto them. By these two offices the greatest part of this county, if not all, is vested in possession of the crown ; but because my Lord-Deputy conceived his Majesty's pleasure to be, that the natives of the country, to whom his Highness had granted his general pardon, shall be re-established in their possessions, which they peaceably held, before the late war (albeit I do not understand that his Lordship hath any particular direction touching the disposition of this country of Breny O'Relie) ; his Lordship therefore thought fit to look back to the time before the rebellion ; and to inform himself how every man's possession stood at that time, and thereupon commanded one of us to take the like pains as were taken in Fermanagh, and in the like order and method to distinguish the possessors and possessions of this country ; which was the more easily performed, because in the Irish countries, where the custom of tannistry is not extinguished, the tenures are every where alike. There is first a general chieftian of every country, or territory, which hath some demesnes, and many household provisions yielded unto him by all the inhabitants ; under him every sept or surname hath a particular chieftian, or tannist, which has likewise his peculiar demesnes and duties, and their possessions go by succession or election entirely, without any division : but all the other lands, holden by the inferior inhabitants, are partable in course of Gavelkind, wherein there is no difference made between legitimate sons and bastards ; and therefore these customs, both of Tannistry and

Gavelkind, in this kingdom, are lately, by the opinion of all the Judges here, adjudged to be utterly void in law ; and as they are void, so shall they be shortly avoided and extinguished, either by surrender or resumption of all the lands which are so holden.

My Lord-Deputy having received the like survey of the lands, and the like distinction or list of the freeholders in this county, as was presented to his Lordship in M'Guyre's county, deferred the disposition and settling thereof until his return to Dublin, having a purpose in Michaelmas term to make a perfect establishment of these three counties.

The estate of the lay possessions being discovered, we did not omit to enquire of the number and value of the parsonages and vicarages, of the reparation of the churches, and of the quality of their incumbents ; by which inquisition we found, that the greatest number of the parsonages are appropriate unto two great abbeys lying within the English pale, namely the abbey of Fower, in Westmeath, granted to the Baron of Delvyn, and the abbey of Kells, whereof one Gerarde Flemynge is farmer. To the first of these, fourteen parsonages within this county are appropriate, and to the other eight, besides there are two or three more belonging in like manner to the abbey of Cavan, in this county being now in the possession of Sir James Dillon. As for the vicarages, they are so poorly endowed, as ten of them being united will scarce suffice to maintain an honest minister. For the churches, they are for the most part in ruins ; such as were presented to be in reparation, are covered only with thatch. But the incumbents both par-

sons and vicars, did appear to be such poor, ragged, ignorant creatures (for we saw many of them in the camp) as we could not esteem any of them worthy of the meanest of those livings, albeit many of them are not worth above 40s. per annum. This country doth lie within the diocese of Kilmore, whose bishop (Robert Draper) was and is parson of Trym, in Meath, which is the best parsonage in all the kingdom; and is a man of this country birth, worth well nigh 400l. a year; he doth live now in these parts, where he hath two bishoprics; but there is no divine service or sermon to be heard within either of his dioceses. His Lordship might have saved us this labour of enquiry, touching matters ecclesiastical, if he had been as careful to see the churches repaired and supplied with good incumbents, as he is diligent in visiting his barbarous clergy, to make benefit out of their insufficiency, according to the proverb, which is common in the mouth of one of our great bishops here: *that an Irish Priest is better than a milch cow.*

Lastly, our gaol-delivery was greater in this county, and the civil causes were more in number, and of better consideration and value, than those that did arise in the other two shires, which we had past before; yet we finished all our business here within five or six days, and after returned to Dublin about the 22nd of August. This report of our service in the county of Cavan, I have contracted and delivered summarily, as well for that I doubt that I have been too large in the precedent discourse, as also, because we held an uniform proceeding, and did, in a manner, the same things which we had performed in the other places of sessions.

Now, may it please your Lordship, upon consideration of the whole matter, in my weak apprehension, I conceive thus much: That if my Lord Deputy do finish these beginnings, and settle these countries, as I assure myself he will, this will prove the most profitable journey for the service of God and his majesty, and the general good of this kingdom, that hath been made in the time of peace by any deputy these many years: for first, his Lordship having gotten a true and clear understanding of the state of the clergy in these parts, many will take a direct speedy course for the planting of religion among these rude people, who are apt to take any impression: for his Lordship, knowing the number and value of the benefices, in every county, may cause an union, or rather a sequestration to be made of so many as will make a competent living for a sole minister; then may he give order for building of as many churches as there shall be competent livings for ministers in that county. And this preparation being made, his Lordship may lastly provide sufficient incumbents to serve in these churches.

Next for his Majesty's profit, there will be revived, and assured unto the crown, 500l. per ann. out of Monaghan; which though it was formerly reserved, was never paid to the King's coffers: and out of the other two counties there will be raised 500l. a year now, at least, for rent and composition. Besides, the crown is restored to all the patronages of ecclesiastical promotions, which heretofore were usurped by the Pope, and utterly neglected by the State here. Lastly, his Majesty shall have wardships, escheats, fines, ameracements, and othr casualties, which were

never had nor heard of before in these parts.

Finally, for the common good, not only of these parts, but of all the kingdom besides, his Lordship, in this journey, hath cut off three heads of that hydra of the North, namely, M'Mahown, M'Guyre, and O'Relie: for these three names of chieffy, with their Irish duties and exactions, shall be utterly abolished: the customs of tannistry and gavelkind, being absurd and unreasonable, as they are in use here, and which have been the cause of many murders and rebellions, shall be clearly extinguished; all the possessions shall descend and be conveyed according to the course of the common law: every man shall have a certain home, and know the extent of his estate; whereby the people will be encouraged to manure their land with better industry than heretofore hath been used, to bring up their children more civilly, to provide for their posterity more carefully; these will cause them to build better houses for their safety, and to love neighbourhood; thence will arise villages and towns, which will draw tradesmen and artificers; so as we conceive a hope, that these countries, in a short time, will not only be quiet neighbours to the pale, but be made as rich and as civil as the pale itself.

This is the effect of the service, which was performed in that journey, which my Lord-Deputy made into Ulster this summer vacation, whereof I have made unto your Lordship a broken and disjointed relation, for which I humbly crave pardon; the rather, because I was continually interrupted in the writing thereof, being employed, upon my return out of the North, together with my Lord Chief Justice, in a new commission of assize and

nisi prius for the counties of Waterford, Wexford, and Wicklow ; so as I have been enforced to take fractions and starts, and almost instants of time, to finish the several periods of this rude discourse ; in which, notwithstanding, I hope your Lordship will, according to your wonted noble disposition to me, accept in good part : And so, with the presentation of my humble service, I leave your Lordship to the Divine preservation.

JO : DAVIS.





II. OBSERVATIONS

TO THE

EARL OF SALISBURY :

MAY 4TH, 1606.

AFTER A JOURNEY IN MUNSTER.*

SIR JOHN DAVYS to the EARL OF SALISBURY.

MAY it please y^r Lp: I haue sent y^r Lp. herewith a long relaçon of many matters; though there bee few of weight or importance, but it becometh mee to advertise y^r Lp. only of matter of fact and circumstance, and not matter of conclusion or counsell. Before I made this iourney into Mounster, I had seen the other three parts of this kingdome, so having now seen the fourth and best part, I haue mine eye satisfied; and if I could once see a good church and commonwealth in every part thereof, I should have my mind satisfied too. The streames of justice ar in some good measure derived

* From the State Papers of Ireland, Vol. 218, 52: the short prefixed Letter is *literatim* from the original, the "Observations" as modernized in the Calendar. Vol. I, pp 463-77. G.

into every province of this kingdom, and yet more and better conduit-pipes wee could wish. As for the harvast of the Church, it cannot possibly be gatherd in for want of labourers; for they that ar here, ar too few and too negligent. The gentleman who is lately transmitted over is the principal champion of the recusants, and they expect he will procure a stay, if not a reversall of the proceedings heer, and yet when I looke upon him or hear him speak, I cannot imagine but that his imagination is a little crazed, either out of malice or out of an immoderate opinion of himself. But wee hope heer that y^r Lp. with a little persuasion, will cause him to come to church again; as he did in my Lord of Essex his tyme heer, for assuredly he is more ambitious and popular, then religious.

Now for myself, since I have lost so noble a lord and patron of my poore fortunes as the Earle of Devonshire, who first transplanted mee here, (and of whom I shall ever hold a grateful and honourable memory) I doe now in all humility and devotion entirely cast myself entirely into your Lps. favour and protection, and doo most faithfully and affectionately give and dedicate myself to the service of y^r Lp. humbly beseeching y^r Lp. to receave me into the number of such as wholly depend vppon you: and so wih my prayers to God for y^r preservation I resolve ever to continew y^r Lps. in all humble duties.—4 May 1606.*

JO. DAUYS.

* P. 1. *Hol. Sealed. Add.:* Sir John Davys to the Earl of Salisbury.

OBSERVATIONS made by SIR JOHN DAVYS, Attorney of Ireland, after a journey made by him in Munster.

It may please your Lordship,

About a year and a half since, when I returned out of Ulster, where I had been employed as one of the justices of assize, I did then presume to trouble you with a relation of all the occurments of that journey, intending thereby to give you a particular view and discovery of the state of that province at that time. You were pleased to accept of that rude advertisement favourably and nobly, which I humbly acknowledge ; and therefore, having performed the like service this Lent vacation in the several shires of Munster, (being associated with the Lord Chief Justice of the Common Pleas), I have thought it agreeable to my duty to give you the like account, although the place, the people, the business were much unlike and different. For Munster being the south, and Ulster being the north quarters of this kingdom, Munster beyond comparison is better inhabited and manured, having in it three ancient and well-built cities, Waterford, Cork, and Limerick, besides divers fair corporate towns, not inferior to the better market towns in England : whereas on the other side, Ulster is a very desert or wilderness ; the inhabitants thereof for the most part having no certain habitation in any towns or villages, only upon the east sea-coast there are three or four poor towns inhabited, as Knockfergus, Carlingford, the Newrie, and Dundalk, besides the Derrie, newly built and incorporated upon the river of Loughfoyle. Again, Munster was divided into several counties or shires above 300 years since ; an argument that our law

hath as long been current there, though the course thereof hath been many times interrupted by defections and rebellions, and now for a space of 30 years past that province has been governed by a President and Council residing amongst them, which hath made our civil government and justice familiar unto them. But on the other part, Ulster hath ever been such an outlaw, as the King's writ did never run there until, within these few years, it was cut into several counties by Sir John Perrott; and yet the laws of England were never given in charge to the greatest part of that people, neither did any justice of assize ever visit that province before the beginning of His Majesty's reign. So as the face and form of things in these two circuits did arise and appear unto me very different; yet there was one resemblance, namely this, the people of both provinces did seem to take great comfort to be visited by justices from the State. The poor northern people, because they were subject before to the judgement of their lewd Brehens [Brehons], who knew no other law but the will of the chief lords; and the Munster men, though they be governed by a just and worthy President, yet, because the ordinary justices of that province who assist the Lord President, have their estates, their residence, and their alliance there, they were glad to see strangers joined with them, and seemed to like the aspect of us that were planets, as well as that of their own fixed stars.

We began to execute our commission in the Waterford. city of Waterford, where we found the Lord President, with the Chief Justice of that province, and some others of the Council there.

The county of Waterford is but little, yet, because the session was holden in the city, the appearance was great. The jail was not very full, and the prisoners for the most part were natives of that shire, of which there were very few which were not bastard imps of the Poores [Powers] and Geraldines of the Decies, which two septs do overspread all that county. This bred some difficulty in the trials there, for the sheriff could not impanel a jury of freeholders, but some of them must be of the surname and kindred of the prisoner that was to be tried, so that, if the evidence were not full, they would ever acquit the party; and where it was direct and clear, we were fain sometimes to threaten them with the Star Chamber before we could get a verdict for the King. Whereupon I observe that, whereas the negligence of the ecclesiastical and civil magistrates hath given way to the licentiousness of this people, it hath filled that kingdom full of bastards; for as, by reason and impunity of the common use, the bastard is of as good reputation as the legitimate, and doth commonly share the inheritance with him, hereby it cometh to pass in this land the septs are great and more spreading, and that there are more of one surname than are to be found in England, or in any kingdom in Christendom, insomuch as I think I may truly affirm, that there are more able men of the surname of the Bourkes, than of any name wheresoever in Europe. The like may be said of the Geraldines, Butlers, and the Poores, of whom I spake before, and so of the Irish septs, as the O'Neals in Ulster, the M'Carties in Munster, the Birnes and Kavanaghs in Leinster; for the Moores and Connors are

almost extirped by the late wars, and yet these weeds are like to grow up apace, if every lewd woman may father her child upon whom she list, and the promiscuous generation of bastards be suffered. Besides the branches of these great septs are not dispersed and scattered, as the younger brothers of other countries are wont to seek their fortunes abroad, but they still plant themselves altogether and possess one country or territory together; which is not only an impediment of equal trials and a cause of perjury in time of peace, but in time of war their neighbourhood and cohabitation gives them opportunity to conspire together, and to rise in arms together against the State, if the chief or most active of the surname happen to be displeased. For these being so near him, are like so many arms and limbs unto him, and make him as strong and proud as one of those giants who were born with hundreds of hands, and being proud of their strength did rebel against Jupiter. It were therefore an excellent policy, if a convenient way might be found, to break and scatter these septs, and severally to transplant them among other names and families; and withal it were expedient that a law might be made that no bastard should bear the name of his reputed father, for if this were effected, sundry mischiefs would be taken away which do often hinder the public justice, and give occasion of stirs and rebellion.

Touching the causes, either civil or criminal, in this country, there fell out none that are fit to be signified to you as extraordinary matters.

For reducing of the people to church, a double course was holden against the multitudes of

recusants in the cities and towns, where we sat. We proceeded by way of indictment upon the statute 2^o Elizabeth, to levy the penalty of 12*d.* upon every person for every Sunday and holyday on which they absented themselves from the church, because this is a positive law, and the pain thereof seems not to be heavy; the people do not repine at the execution thereof, specially because the moneys are employed to charitable uses, and yet assuredly, if the statute were fully executed both in the towns and in the country, this poor kingdom would not be able to bear it. And we perceive already that the churl, and farmer, and poor country gentleman,—if their churches were re-edified,—and the artisans and meaner sort of citizens, will be in short time drawn to conformity by this law only. The other course taken by my Lord President against the aldermen and chief burgesses of cities and towns, was a course of prerogative in sending mandates under the seal of the Council of that province, in like manner as the Lord Deputy had proceeded against the citizens of Dublin. His Lordship had sent his mandates to Waterford, and therefore being now come himself, he sent a messenger unto such as had received mandates, commanding them to attend upon him and the justices of assize to church; which they refusing, for only the mayor did bear us company, he had purposed to punish them with fine and imprisonment, but that they desired to have their consciences satisfied with conference, and with that end they prayed to be spared until after Easter; his Lordship and the rest willingly yielded to the request, and appointed two preachers to confer with them; albeit then we did suspect they

desired this conference, not to be satisfied, but to win their liberty during the Lent, for hearing of mass and performance of their superstitious ceremonies. The Mayor of Waterford, Sir Richard Ayleward, hath willingly and *bona fide* conformed himself, and the sherrieff of the shire, one Mr. Poer, is a well-affected Protestant. The rest for the most part continue in their recusancy.

“From Waterford we passed to Cork, and by Dungarvan. the way we lodged the first night at Dungarvan, where, the next morning being Sunday, we heard a sermon, at which all the people of that poor town were present, one or two of the chief burgesses excepted, who desired a time of conference, which was granted unto them. This general conformity was wrought by the presence of the Lord President the week before, when he passed that way from Cork to Waterford. Here, when I perceived how easily the inferior and common sort of people are drawn to the church, I began to doubt whether it were not a preposterous course to proceed against the wealthier sort of aldermen and citizens first, because they being proved by reason of their wealth, and consequently wilful, and withal most laboured and wrought by the priests as being best able to entertain them, are resolved to suffer at first for the credit of their cause, presuming this storm will quickly be overblown, as it hath been in former times; and so by their example they make the multitude more obstinate. Whereas on the other side, if the churches were filled at the first, but with the inferior sort of people, the richer sort of people, being the less number, would be ashamed of their paucity, and their cause would fail of the coun-

tenance it had by the general defection and recusancy; besides many of them which forbear the church, not so much for conscience as for popularity, would follow the multitude willingly, and think their credit with the world sufficiently saved, in that they were not the first nor the only men that conformed themselves. So that it may be probably concluded that as, if the better sort were compelled to repair to the church, they of the meaner condition would come for fear; so, if the general multitude were drawn to conformity, such as are persons of quality for the most part would come for shame. But which of these courses is first to be pursued I will not take upon me to resolve. In Dublin both are prosecuted together, with this success;—of 20 aldermen and citizens which were censured, one only is reduced; for the rest, some lie still in the Castle, refusing to pay their fines, others are enlarged, having paid or taken order for the payment of their fines. But of the common inhabitants of the town a great number do repair to their several churches, and that number doth weekly increase; so that it is to be hoped, within a short time, few of the meaner sort will absent themselves. With these the pain of twelve pence every Sunday prevails. But if the wealthier sort have no heavier punishment than to pay twelve pence Irish for every Sunday or holiday, which amounts not to three pounds sterling for a whole year, they would make a scorn both of the statute and of the proclamation; so that law and prerogative must go together in this and other towns, and I hope ere it be long they will prevail effectually. It hath been thought meet hitherto to endeavour the reformation

of the towns only and specially of Dublin, being the seat of the State ; so that no Lord or gentleman in the country has as yet been troubled for recusancy, only some were restrained for contriving and exhibiting that factious petition, which you have seen. The true reason why the country towns and villages are not yet looked into doth consist in this—the most part of the churches are broken down or ruined, and the commission for the re-edification thereof, and planting the ministers therein, hath not yet been executed. The New Testament and the Book of Common Prayer in the Irish tongue, which will incredibly allure the common country people, are not yet fully prepared ; besides it hath been thought that, if the cities might have been reduced first, the country would have followed their example without contradiction. Yet hath it not been thoroughly neglected. For by the diligence of some of the clergy and of some well-affected gentry in the country, divers parishes in the country are entirely reclaimed already. Among others, the bishop of Kildare doth deserve good recommendation, who being Vicar of the Naas, the chief corporate town in the county of Kildare and within 12 miles of Dublin, hath drawn well nigh all his parishioners to his church, and of them more than two hundred received the Communion this last Easter, as himself told me within these few days. Likewise divers parishes near Dublin are wholly conformed, and others within the bishoprick of Meath ; so that the English Pale is not so universally Catholick as Sir Patrick Barnewell and some others will affirm it to be. As for Leaxe [Leix] and Offaly, by reason of the English colonies planted there, the great part of

the people do willingly come to church. In Ulster, Knockfergus and the Derrie have not one recusant in them ; and all the people of that province, at least the multitude, are apt to receive any faith if the Bishop of Derrie, who hath engrossed three great bishopricks in the North, would come and be a new St. Patrick among them. The poor priests themselves do not refuse the oath of supremacy there, and the like I hear of the priests of Connaght, where the Justices of Assize this last Lent, as one of them told me, have taken the oath of 40 priests at least. In a word, if this work of reformation, were undertaken in all parts, there would be little difficulty found, but only in the chief towns, which are not many, and in the English Pale ; and in these places the chief persons only will oppose themselves, which chief persons, if the multitude were drawn from them, would stand so naked and solitary that either shame or fear would draw them to conformity.

From Dungarvan we came to Youghall, where, Youghall. resting one night, my Lord President called before him the mayor and chief burgesses, who had formerly received commandments to repair to the church. They desired time for the satisfaction of their consciences, as those at Waterford had done, and obtained that favour. This town is inhabited with many English, all which, together with some Irish, do frequent the church, which is well served with a sufficient preacher ; so that my Lord President hath great hope to make this a town of the reformed religion in a short time.

From Youghall we came to Cork, and dined Cork. by the way with the Viscount Barrie,

who at his castle at Barriecourt, gave us civil and plentiful entertainment. When we came to Cork my Lord President having taken an extreme cold, kept his chamber during the time of the sessions, but the rest of the commissioners performing the service, there was great appearance and good attendance of the principal inhabitants of this county. There were present with us the Lords Barrie and Rowe, the Bishop of Cork, the poor Lord Courcey, together with the principal lords of countries, as Cormock M'Dermot, and other of the M'Carties, O'Swillivan, O'Driscall, and Sir John FitzEdmond of the Geraldines; only the White Knight and his son made default, pretending himself to be sick, but indeed he was obnoxious unto many challenges, and amongst other things he doubted lest he should be charged with relieving of one Morrie M'Gibbon Duff, a kinsman of his own, who is now a wood kern and called a rebel, and so indeed it was presented unto us by the grand inquest of the county. When we had delivered the goal, which was full of persons, and tried some nisi prius, a trial not usual in these remote parts before this time, we did not forbear to reprehend the great lords for continuing their barbarous custom of Cosherie and other Irish occupations, to the impoverishment of their tenants and in contempt of the King's proclamation on that behalf, whereof we had private information, though the tenants themselves durst not complain; only one or two who had been dispossessed of part of their freeholds for not being able to pay cess and contribution to their lords in time of war, did complain, and were restored to their possessions. This reprehension and justice done against the lords, as

it was a great comfort to the inferior sort, so, to do the lords right, they seemed to be nothing dissatisfied therewith, but promised faithfully to abolish all Irish Customs, and to perform obedience to the proclamation in all points. This being done, we called well nigh 100 of the citizens and burgesses of Cork, who, at the quarter sessions before, had been indicted upon the statute for not coming to church; we required them to pay the penalty of the laws (viz.) twelve [pence] for every Sunday and holiday. The chief of them desired copies of the indictments, to the end they might put their traverses thereunto. We told them that, if they would be bound to come to church next Sunday they should be admitted to their traverses, but if they would not do so, we would not permit them to use this wilful delay; whereupon they submitted themselves to payment. The gross sum amounted to 60*l.* and upwards, for which we appointed collectors, and assigned the moneys towards the building of a hospital there; as well because that town does swarm with poor and impotent people, as also because one of the citizens dying in London had by his testament given 200*l.* to maintain the poor whensoever the city should erect a hospital. The citizens were glad of this assignment.

And so we departed from Cork towards the county of Clare and Thomond, where we had appointed our next session; in which county, because it is taken to be out of my Lord President's jurisdiction, we had my Lord of Thomond only joined in commission of gaol delivery and oier and terminer with us: so that my Lord President remained at Cork to recover his health, making

appointment to sit again with us when we should hold session for that county of Limerick. The first night we lodged at Malowe, a house of my Lady Norries, which is a well-built house, and stands by a fair river in a fruitful soil, but it is yet much unrepaired, and bears many marks of the late rebellion. From thence we passed by Kilmalocke, a good corporate town, over a sweet and fertile country, unto the city of Limerick, which is indeed a town of castles, compassed with the fairest wall that ever I saw, under which runs the goodly river of the Shannon, which makes it a haven for ships of good burden. Though it stands above three score miles from the sea, yet such is the sloth of the inhabitants, that all these fair structures have nothing but sluttishness and poverty within. At our entry into the town we were met by the Earl of Thomond, the Lord Bourke, and others; the Earl having for our great ease prepared a commodious house to sit in the county of Clare on the other side of the Shannon, which divides the county of Clare and Thomond from the county of Limerick; so that we still kept our Lodging and residence in Limerick, and yet performed the service of both counties. In the county of Clare, which contains all Thomond, when I beheld the appearance and fashion of the people I would I had been in Ulster again, for these are as mere Irish as they, and in their outward form not much unlike them, but when we came to dispatch the business we found that many of them spake good English and understood the course of our proceedings well. For the justices of Munster were wont ever to visit this county, both before my Lord of Thomond had the particular govern-

ment thereof and sithence. After the dispatch of the gaol, which contained no extraordinary malefactors, our principal labours did consist in establishing sundry possessions of freeholders in that county, which had been disturbed in the time of rebellion, and had not been settled sithence. The best freeholders next to the O'Briens are the M'Nemaraes and the O'Laneyes. The chief of which families appeared in a civil habit and fashion, the rest are not so reformed as the people of Munster. But it is to be hoped that the example of the Earl, whose education and carriage your Lordship knows, and who indeed is served and waited on very civilly and honourably, will within a few years alter the manners of this people and draw them to civility and religion both.

We ended the ordinary business of the county Limerick. of Clare somewhat sooner than we expected, and therefore we began the session of the county of Limerick, a day or two before my Lord President's arrival there. Among other malefactors, one Downing who had been a lieutenant in the late wars, and dwelt not far from Limerick, was indicted for murder on the procurement of my Lord Thomond, and the cause stood thus: Downing having obtained a commission from my Lord President of Munster, to execute by martial law vagabonds and masterless men, and such as had borne arms in the late war, it happened that an idiot fool belonging to my Lord of Thomond, with another of the same quality that followed Sir John M'Nemara, a knight of Thomond, came straggling into the village where Downing dwelt; he, meeting with them on a Sunday morning, took them and immediately hanged them both. My Lord of Thomond

assuring himself that Downing knew the idiot, and knew he belonged to him (for he was a notorious fool known to all the country), and that therefore he did execute the poor creature maliciously, caused an indictment of wilful murder to be exhibited against him, before my Lord President came to the town; upon this my Lord President conceived some unkindness, because, having received his authority from him, and the fact being done within his province, he expected that my Lord of Thomond should first have acquainted him with the matter, before he had proceeded in this manner. Notwithstanding, the bill was found, and we proceeded to trial; but with this protestation;—that we would not call the authority in question, but allow it him as a justification in law, but we would examine whether he had exceeded his authority maliciously or no; pronouncing this withal, that, if he knew him to be a natural idiot, or knew him to belong to my Lord of Thomond, he had transgressed his commission maliciously and consequently had committed murder. We chose the most indifferent jury we could to try the prisoner, who was found guilty upon some evidence that was given that he knew the idiot, and knew him to belong to my Lord of Thomond. Upon the giving up the verdict, some few words of passion passed between my Lord President and the Earl; but they were not so bitter, but that I hope this term at Dublin, where they purpose both to be present, an atonement will be made betwixt them, when they have somewhat expostulated the matter before my Lord-Deputy. But in the meantime, we for our parts, though the fact was foul, and though our provost

marshals are oftentimes too nimble and too rash in executing their commissions, so that it were not amiss that one or other of them did smart for it, and were made an example to all the rest, yet, because we would not utterly discountenance the martial law, which at that time and that place perhaps had been necessary ; and because Downing had been a tall soldier, and performed good services in the late wars, we thought good to reprieve him, to the end my Lord Deputy may grant him His Majesty's pardon, if it so please his Lordship. The gaol being cleared, we began to consider how we could cut off two notorious thieves, or, as they term them, rebels, who, with two or three kern at their heels, did infest the whole country. The one Maurice M'Gibbon Duffe, whom I named before, the other one Redmond Purcell, cousin german to the best of the Purcells, whom they call the Baron of Loughmowe in the county of Tipperary; the former we found to be received and cherished for the most part in the White Knight's country ; the latter we understood chiefly to be relieved in the county of Arra upon the borders of Thomond and Tipperary by Sir Tirlagh O'Brien and his sons, which Sir Tirlagh is brother to the bishop of Killalowe, natural Lord of Arra and uncle to the Earl of Thomond, by the mother's side. We first called the White Knight and his son, whom by special commandment we sent for to Limerick, and charged them with the relieving of the traitor M'Gibbon. They protested the contrary, and vowed their utmost endeavours to bring him to justice. Notwithstanding we thought it good to commit them both, for then we knew their kinsmen, tenants, and followers would use

all possible means to get the traitors, to procure the liberty of their chief lords. Howbeit, the White Knight, with importunity and vows of service, did prevail so far with my Lord President, that he got licence to return to his country for one month, and, if in that time he performed no service upon the rebels, himself and his son should render themselves to my Lord President, to be restrained or punished as his Lordship should think meet. For Sir Tirlagh O'Brien and his sons, we had once resolved to take bonds of them for their appearance at the next sessions, because the proofs against them were not direct and clear ; but afterwards the Bishop of Killalowe, his own brother, accusing him and his sons as relievers and familiar companions of Redmond Purcell, my Lord President, after our departure from Limerick towards Cashell, committed them prisoners to the castle of Limerick. Whereupon this effect did follow : Purcell, not daring to trust the inhabitants of Arra, among whom he was wont to lurk, fearing they would seek his head to redeem Sir Tirlaghe's liberty, retired into the county of Limerick, where one Morice Hurley drew him into a castle of his, and brought some of my Lord President's soldiers upon him, who, killing one or two of his kern, took Purcell himself alive and brought him to the President since the end of our circuit, so that now we hear he is executed by martial law. As for Morice M'Gibbon, the like must needs befall him shortly, for there are so many snares laid to entrap him, that it is not possible for him to escape. After this we received some petitions on the behalf of certain undertakers of this county and the county of Kerry for the re-establishment of their possessions

in some parcels of land whereof they had been disseised in the time of the late wars. These undertakers, though they move pity in regard they are English and poor, yet in other respects deserve no favour. For they are the most backward in payment of the King's rent of any fee-farmers in Ireland, and yet they had their arrearages remitted unto them the last summer; next, they suffer almost half their land to lie waste, and to be unprofitable either to themselves or to the commonwealth; and lastly, they observe few or none of the covenants comprised in their letters-patents, and laid down in that wise and exact plot for the undertakers of Munster; and amongst the rest they utterly neglect the principal, namely, that they should inhabit their lands with tenants of English birth, to the end that every lord of a seignior, being able upon all occasions to rise up with 150 to 200 Englishmen, they might be a mutual strength and security one to the other, and be enabled to stand upon their guard against the mightiest rebel that could rise in those parts. But contrariwise, all our undertakers for the most part have planted Irish tenants in their lands, and among others, even the sons and kinsmen of the ancient proprietors and owners thereof, who forfeited the same by their attainders; so that these vipers being nourished in their bosoms, upon the first alarm of any rebellion, do fall upon their landlords and cut their throats, make spoil and booty of all their substance, and cast out their wives and children stript and stark naked, whereof even these men themselves had a bitter experience upon the last revolt in Munster. When we had heard and

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ended the greatest part of the civil causes arising in this county, there was some time spent in the execution of a commission directed specially to inquire who was next heir to Richard, late Lord Bourk of Castleconnell, who together with his brother Thomas (who was indeed his next heir-apparent) was slain in the late rebellion. After their death, Tibbot Bourke, the surviving and youngest brother of that house, supposing the rest to be dead without issue, claimed the lands and the title of the Lord of Castleconnell, and hath ever since enjoyed the same. Now this commission was purchased and pursued by a gentlewoman, who saith she was the lawful wife of Thomas, and had issue a son by him, who, if he be legitimate, must needs be the heir of the house;—Tibbot Lord Bourke affirming on the other side that she was never lawfully married to his brother Thomas, and consequently that her son is a bastard and not heir.

A jury being composed of the best gentlemen of the country, as it was meet in a cause of that importance, the evidence on both sides fell out to be thus:—It was first directly proved that although Richard and Thomas were both slain in one conflict, yet Thomas died before Richard, and so the wife of Thomas was utterly precluded both of her title of dower and title of honour. Howbeit the gentlewomen brought divers witnesses, who deposed directly that she was married to Thomas Bourk, and that they were present at the marriage, and that it was solemnized with a mass. They named likewise the priest, with other circumstances; as that Thomas Bourke received marriage goods of her friends, and brought her home to his.

own house, and after all this had a son by her. My Lord Bourke, on the other side, brought forth a certificate from the priest himself (who durst not appear in regard of this proclamation) to this effect: That, true it was they came to the church to be married, that their friends on both sides were present, that they had a mass. But, saith he, when I examined the parties touching the canonical impediments which might hinder the marriage, I found reason to forbear to marry them, and so the assembly broke off, and without the celebration of any marriage at all; besides it was proved that Thomas Bourke did shortly afterwards entirely abandon the gentlewoman, and when word was brought him that she had borne him a son, he protested publicly that he would not father it. This doubtful evidence did so perplex the jurors (who withal were carried with divers affections) that they continued 24 hours, yet could not agree of a verdict; whereupon, although the jury upon an inquisition be not so strictly kept as a jury of trial between party and party, who are ever kept from meat, drink, fire, and candlelight, till they be agreed, yet it was thought fit to restrain these in a private house, that they might agree before our departure. Nevertheless, because they could not agree when we departed, they were all bound to appear this term in Dublin, either to yield up their verdict or to be censured for their contempt. Upon these doubtful terms doth the title of that barony as yet stand. The last part of our business here was to indict the citizens of Limerick for not coming to church according to the statute, which was the more easily done, because the foreman of the jury was a well-

affected Protestant. So that there stand indicted 200 and more of the burgesses of that town, and for the penalties for six months, and when they are levied will amount to 200 marks ster. or thereabouts. We have assigned it to the repairing of the cathedral church there, which hath suffered much dilapidation and ruin.

Those businesses being thus passed over, we
Cashell. passed from Limerick to Cashell, over the most rich and delightful valley in Ireland, for the space of 20 miles together. At Cashell we held sessions for the county of "the Crosse" and Tipperary. It hath been anciently called the county of Crosse (for it hath been a county above 300 years, and was indeed one of the first that was made in this kingdom,) because all the lands within the precinct thereof were either the demesnes of the Archbishop of Cashell or holden of that see, or else belonging to abbeys or other houses of religion, and so the land is, as it were, dedicated to the cross of Christ. The scope or latitude of this county, though it were never great, yet now it is drawn into so narrow a compass that it doth not deserve the name of shire. For whereas in former times (as we were informed) the whole county contained 150 plough-lands or thereabouts, wherein the sheriff of the Cross is suffered to execute his authority, because the county of the liberty of Tipperary, wherein the Earl of Ormond doth claim and use *jura regalia* by an ancient grant of Edward 3, hath from time to time so encroached upon the lands of this little county, that it is almost swallowed up; and these encroachments have been for the most part in time of war and public rebellions. For then, the people of this

county, fearing to be burdened with cesse of soldiers and other, contributions of the country, would affirm that their lands lay within the county palatine of the Earl of Ormond, whose greatness and favour with the estate was ever such that he protected the inhabitants of his liberty from burdens of that kind. We had appointed so short a time for the execution of our commission there, being informed that very few businesses would arise unto us in that place, that we had not leisure to examine these encroachments; but we resolved to take order above, that a special commission for that purpose should be awarded to be executed this next summer vacation, and in the meantime to search the records for the ancient limits and extent of that county. We found not in the gaol of this shire above two or three prisoners, and as many more appeared on recognizances; of which only one was arraigned, condemned, and executed, and the rest being loose and idle persons, found masters or sureties for their behaviour, and so were delivered; whereupon there remained nothing to be done but to indict the recusants of that town, wherein we found only one inhabitant that came to church, for even the Archbishop's own sons, and son-in-law, dwelling there, are obstinate recusants. We indicted more than 100 in this poor town, and appointed the penalties to be employed towards the reparation of the parochial and cathedral church, which is a fair ancient structure upon a high hill, which is nothing but a main rock on the west side of the town.

Departing thence we came to Clonemell, a Clonemell, well-built and well-kept town upon the

river of Sure, in the county of the liberty of Tipperary. In this county we gave in charge to the jury all matters not determinable by the Earl's charter, viz., all treasons and all other offences which have been made capital or otherwise penal since 46 Edward 3, in which year the Earl's charter doth bear date. We arraigned but one prisoner, namely, one of the sons of Sir Tirlagh O'Brien before named, who was indicted for a murder, which fact is treason by a particular statute in this realm, and was found to have been committed by him and Redmund Purcell, the wood kern or rebel of whom I spake before, with others of that lewd company. This country did so much complain of mischiefs done by Redmond Purcell, that it was thought meet for a terror and example to suffer the execution of the law upon this young gent, and accordingly he was executed. After this my Lord President (whose zeal in matters of religion tempered with good moderation, doth merit very much consideration,) was desirous that a priest, one James Morice, who was lately before apprehended, should have been indicted for publishing a slanderous and seditious bull, though without all question it be a forged and counterfeit thing, as you may perceive by the copy, which I have presumed to send to you herewith, albeit perhaps you have received it already. Before we would conceive any indictment hereupon, we thought meet to examine the evidence, which we found not to be ripe enough, because the parties that should make the direct proof were not present, and therefore we deferred this business till another session. This town, being in the liberty, is more haunted with Jesuits and priests than any

other town or city within this province, which is the cause we found the burgesses more obstinate here than elsewhere. For, whereas my Lord President did gently offer to the principal inhabitants, that he would spare to proceed against them then, if they would yield to conference for a time, and become bound in the meantime not to receive any Jesuit or priest into their houses, they peremptorily refused both. Whereupon, the chief of them were bound to appear at Cork before the Lord President and Council, presently after Easter, there to be censured with good round fines and imprisonment; of the multitude we caused 200 to be indicted, but with much ado was the grand inquest drawn to find the bill, and yet for the most part they were gentlemen of the country. The Jesuits and priests of name that have lately frequented the town are, Nicholas Lennagh, Jesuit, Andrew Mulrony, Jesuit, Richard White, priest, Gerrard Miagh, priest, William Crokin, priest. Amongst these, Nicholas Lennagh hath special credit and authority; and, which is to be noted, before that horrible treason was to have been executed in England, he charged the people to say three Ave Marias for the good success of a great matter, which, what it was they should not know until it was effected and brought to pass; and as I got intelligence of these priests and Jesuits that resort to Clonmell, so did I learn the names of such others as do lurk in the other principal towns of Munster. In Limerick these three: Brien O'Cairn, a Jesuit, Richard Cadan, Richard Arthure, priests, In Cork these: Robert Miagh, Dominick Rocke, James Miagh, priests. In Waterford: Dr. White, Jesuit, Lumbard, a priest, &c.

If our bishops, and others that have cure of souls, were but half as diligent in their several charges as these men are in the places where they haunt, the people would not receive and nourish them as now they do. But it is the extreme negligence and remissness of our clergy here which was first the cause of the general desertion and apostacy, and is now again the remora or the impediment of reformation. My Lord President doth use his best diligence to apprehend these priests; but he findeth difficulty in it, because they do easily lurk or escape in a country where every man beareth them favour. Besides they live in the houses of gentlemen and noblemen under the name of surgeons and physicians, and can hardly be taken in the exercise of their functions. Howbeit, since the apprehension of Lalor here in Dublin, the priests and Jesuits that frequent the English Pale have conceived some fear; and some of them have made means to my Lord Deputy that he would remit their contempt in staying here after the time prefixed in the proclamation, and to permit them forthwith to depart the kingdom. We finished the few businesses that were to be done at Clonmell on Easter-eve, and so concluded our circuit, my Lord President returning to Cork, my associate to his house in the county of Waterford, and myself towards Dublin. And because I was to pass by the Carricke, a house of my Lord of Ormond, where his Lordship hath lain ever since his last weakness, I went thither to visit his Lordship and to rest there upon Easter-day; but because the feast of St. George fell out in the Easter holidays, I was not suffered in anywise to depart until I had seen him do

honour to that day. I found the Earl in his bed, for he was weaker at this time than he had been for many months before ; so that upon the day of St. George he was not able to sit up, but had his robes laid upon his bed, as the manner is. From thence I returned to Dublin at the end of Easter week. These little things are the greatest accidents that happen and arise in this poor kingdom, out of which your Lordship's wisdom will conclude far better reasons of State, than we that were authors in these business are able to expound. And thus humbly beseeching your Lordship to make a favourable interpretation of this my boldness in presenting to your Lordship these occurments being so many and of so mean consideration, I leave your Lordship to the divine preservation.
Your Lordship in all humble devotion

JO : DAVYS.*

Dublin, May 4th, 1606.

* *Pp. 20. Endd.* : "Observations of Sir John Davys, Attorney of Ireland, after a journey made by him in Munster."

"This was found, after the death of Sir Henry Croftes, in a trunk of his, and so came to my Lord's hands towards the end of June 1610.





III. OBSERVATIONS
TO THE
EARL OF SALISBURY :
12 NOVEMBER, 1606
AFTER VARIOUS JOURNIES IN
WICKLOW, &c.*

SIR JOHN DAVYS to the EARL OF SALISBURY,

MAY it please your Lordship : There are not many weeks passed since I presumed to trouble you with an advertisement at large of that journey which was performed the last summer vacation by the Lord Deputy and the Judges of Assize in three of the most unreformed counties of Ulster. When that journey was ended the Chief Justice and myself were employed in a second circuit to visit the counties of Waterford, Wexford, and Wicklow, whereof the two former (being ancient and inhabited by people of English race), have had our laws and government so long in use among them that our business there was usual according to the manner of assizes in England, nothing arising that was extraordinary or of special note or consideration. But the county of Wicklow containing all the

*From State Papers of Ireland, Vol. 219, 1132, and the "Calendar," as before, Vol. II. pp. 14.—22. G.

mountainous country of the Birnes and Tooles (which was never duly reduced into shire ground until the last year, but the inhabitants thereof, even at the elbow of the State, were suffered still to live like outlaws); — in this new county the very appearance, attendance, and conformity of the rude people, if there had been no other occurrent considerable, did, in my apprehension, yield some matter not unfit to be observed, and reported unto you.

When we came to Waterford where we sat first, we found there the Lord President of Munster, with others of the Council of that province.

In the goal there were not many prisoners, nor among them any notorious malefactors, and the civil bills exhibited to the justice were but few and trifling, because the Council table there was possessed of the most and best causes.

The principal business which we had to do, and which drew my Lord President to meet us here, was to inflict some punishment upon the obstinate recusants of that city, which hitherto had not been performed. The course we took against them was of two kinds; against the principal aldermen, we proceeded by way of censure at the Council table of the province for their several contempts against the King's proclamations, and special commandments of the Lord President, under the Council seal of Munster. Against the multitude we proceeded by way of indictment upon the statute of 2 Eliz., which giveth only the penalty of 12*d.* for absence from church every Sunday or holiday. The fines imposed at the table were not heavy, being upon some 50*l.* a-piece, upon others 40*l.* so that the total sum came not to 400*l.*; but there were

so many of the commoners indicted that the penalty of 12*d.* given by the statute came to 240*l.* or thereabouts. This being done, we empanelled a special jury and charged them to inquire of the number of the benefices with cure of souls in that county, of the reparation and decay of the several churches, of the incumbents, of the patrons, and of their yearly value, &c., and we enjoined them to return their presentment unto my Lord President before the 1st of November following. And this in effect was the service which we performed at Waterford.

From thence we went to hold session at Wexford, but by the way (although it were somewhat out of our way) we went to New Rosse, a corporate haven town in the county of Wexford, in which town we were informed that the sovereign and burgesses had committed a notorious outrage in disturbing and interrupting the minister there while he was saying divine service. To examine this matter we went thither, and upon examination we found, that albeit the greatest part of the townsmen be obstinate recusants, yet twice or thrice every year they come all to the church to make a superstitious offering at the place where the high altar stood, and that upon Christmas day last the sovereign and inhabitants, to the number of 200, came into the church with an extraordinary noise and tumult, and making their popish offering, then disturbed the poor minister from making a sermon, which he had prepared for his small auditory ; and that upon Easter day last, the same sovereign came with as great a company, and in the same disorderly manner and interrupted the celebrating of the Communion ; having taken these

examinations we bound over the sovereign and some others whom we found to be busy and most malicious in this disorder, to appear in the Star Chamber this term; for the rest we left them to be indicted upon the statute 2 Eliz. And so from Rosse we departed to Wexford.

At Wexford the gaol delivery was of some length and labour, for the prison was not only full of such as were committed for felonies, but there came in many loose and masterless men, being bound by recognizance to appear at this session. And yet of all that great number there was only one prisoner condemned and executed, whose offence was that he procured the house of a poor Protestant vicar to be burned, which we found, upon examination of the circumstances of the fact, to have been done rather out of malice to his person than to his religion or profession.

The civil petitions or bills were at least 300; besides there came down out of the court above more than 20 causes to be tried by *nisi prius*, and all for titles of land, the mere Irish being plaintiffs in the most part of these trials. We were glad to see them relinquish the trial of the sword and judgement of the barbarous Brehons, and so willingly to descend to the trial of the common law of England; and to encourage them in this course we took as much care as was possible that their juries might be indifferent, giving them and their counsel a patient and favourable hearing, and in truth they seem to be well satisfied. Donell Spaniagh, among the rest, did carry himself modestly and respectfully beyond our expectation. The business of the Crown and country being

finished, we caused the grand jury of the county to indict the recusants of Rosse, and a particular jury of Wexford to indict the recusants of that town; howbeit they found the bills with some difficulty, for we were fain to threaten them with the Star Chamber before they would return any presentment unto us. Lastly, we impanelled a jury to inquire of the parish churches within this country and of the incumbents and patrons, and other circumstances, as we had done in the county of Waterford, and we prefixed them the like time for the return of their inquisition to us at Dublin. And so we ended our sessions at Wexford.

From thence we came to Wicklow, where there appeared such a multitude of the natives of that country, that it seemed strange that so many souls should be nourished in those wild and barren mountains. We ever thought that the reducing of that country to be shire ground would impart much to the preservation of the public peace; but we could not conceive a hope that the rude inhabitants thereof would so quickly have fallen in love with the public justice; because, albeit they were ever near the seats of justice, yet could they never heretofore be drawn to Dublin, but had alway the reputation of outlaws and rebels; however, now I conjecture the cause of their sudden conformity to be this. In the ancient times O'Birne, and in the later times Feaugh M'Hugh and his sons, have exercised their Irish tyranny among them, and though for the space of 50 years past or thereabouts, they have had seneschals appointed by the State, which place Sir H. Harrington now holdeth, yet those seneschals never governed them

according to the laws of the kingdom, but according to their own barbarous customs, and suffered the chief lords to cut and exact upon the inferior people on the one side, so that they might also have their duties and customs paid unto them on the other side. But since the common laws of the realm took place among them, they find an extraordinary liberty and protection, and therefore are exceedingly delighted and comforted with this form of government. Besides the rude people of this country did show their inclination to civility in that the principal gentlemen and freeholders among them did appear in English apparel, which they had never before worn.

The gaol in this new county was very full, out of which two notable thieves, in the nature of rebels, were condemned and executed. But because, before this county was made, the petty thieves were adjudged by the seneschal only to make restitution and to pay some fines, therefore the justices of assize thought it not unfit to convert the indictments of small thefts committed before the country was made a shire, when the people understood not the law, into indictments of trespass only, and to impose fines for the King upon the malefactors. Touching civil causes, we had many petitions and eight trials of *nisi prius* and in the greatest number of them Redmond M'Pheagh, the second son of Pheagh M'Hugh, who was wont to love the trial by the sword better than the trial of the law, was either plaintiff or defendant, resembling in my conceit Ishmael in the Old Testament, of whom it was prophesied, that his hand should be against every man, and every man's hand against him. Lastly,

even in this wild county we impannelled a jury to inquire of the bounds of parishes, of the reparation of churches, of the incumbents and patrons and values of the church livings, enjoining to return their inquisitions before the end of this term. This course my Lord Chief Justice and I have taken in six several counties; and the like hath been done in other parts of the kingdom, so that by the end of the next vacation inquisitions will be found of all the estate of all the parishes and churches in Ireland. But when all this is done, we cannot conjecture or conceive by what means the churches may be supplied with sufficient incumbents; and yet there are few churches now void, but the most part of them are full of the most miserable idols, so that we cannot think or speak of them but with grief or shame. And yet we want not bishops or archbishops to oversee the churches; for there is not a bishop's see that is not supplied double, one being placed by the King and another by the Pope. Being in the north this summer, I met with an Irish scholar, who had been bred in France and Spain, among the fugitives of this nation, and of him I learnt the names and quality of the Pope's titular bishops of Ireland, and who were present in the kingdom, and who were absent, and where they resided.

In Ulster.—Dr. Peter Lombard [Lombard], born at Waterford, bearing the title of primate of Ardmagh; he is now at the Court of Rome, where he hath a pension from the Pope of 200 ducats by the month. He hath also the dignity of a provost in the cathedral church of Cambray.

One O'Boyle* hath the title of Bishop of Rapo [Raphoe] in Tironnell; he was born in that country, and resideth there, being countenanced by the Earl of Tironnell.

Connor O'Dovenney† hath the name of Bishop of Downe and Connor; he liveth in Tyrone; we saw him in our last journey when we were near Ulster, for he was brought into the camp in the habit of a Franciscan. Cormock M'Baron, the Earl of Tyrone's brother, is his chief reliever and receiver.

Richard Brady is the titular Bishop of Kilmore; he is very aged, and lurketh for the most in Westmeath.

Jo. Gawne‡ [M'Gauran] is called Bishop of Ardagh; his abode is uncertain, but he resorteth often to a place called Granard, in the county of Longford.

Owen M'Ivor M'Mahon, one of the sons of Ivor M'Collo, who is farmer to my Lord of Essex, in the Ferny, [Farney], is designed Bishop of Clogher, but is now in Germany.

These are the Pope's bishops in Ulster.

In Leinster.—One Matthias,|| a Spanish friar, hath the title of Archbishop of Dublin; he now liveth in a monastery in Spain, not far from Madrid; he hath a poor pension of three ducats per diem.

* Neal or Cornelius O'Boyle.

† Or O'Duvany; called in a nearly contemporary Latin Catalogue in the Burgundian Library, Brussels, Cornelius Duanus. O'Renehan's Collections on Irish Church History, p. 273.

‡ O'Renehan, as before, p. 274.

|| Matthew de Oviedo, a Friar Minor.

Franciscus di Rivera is the supposed Bishop of Leighlin; he is now resident at Antwarp (*sic*).

Robert Lalor, the priest who is now in the Castle of Dublin, and was a follower of the house of Kildare, is nominated Bishop of Kildare.

In Mounster.—David O’Kerny* is made by the Pope Archbishop of Cashell; he liveth in the liberty of Tipperary.

Thomas White, born in Waterford, and nephew to Dr. Lumbard, the pretended primate of Armagh, hath the title of Bishop of Waterford. He hath a benefice in the Low Countries, but liveth with his uncle at Rome.

Dr. James White† is called Bishop of Limerick, but resideth at Clonmell, in the liberty of Tipperary.

In Conaght.—Florence O’Mulconner‡ hath the name of Archbishop of Tuame, but liveth in the Court of Spain.

One O’Mulrian,§ a native of the county of Limerick, is stiled Bishop of Killaloe; he liveth in Lisbon, and hath a pension of the King of Spain. There are some other bishoprics in this kingdom for which the Pope hath provided bishops, of whom I have no certain intelligence, so, as I said before, all the sees are doubly furnished, and yet the people for the most part have not any exercise of Christian religion. I have had a purpose sometime to draw a few notes which I have collected into a discourse, and therein to discover unto you

* David Carneus : O’Renehan, as before, p. 274.

† Sometimes confounded with Thomas White, Bp. of Waterford.

‡ Florence Conray : O’Renehan, as before, p.p. 395-8.

§ Fr. Cornelius Ryan, *I bid* p. 275.

the true state of the church of Ireland ; but it is so faulty, so deformed, and so out of all order, that I am doubtful lest I should seem to betray an ill nature in discovering the faults thereof too bitterly, for in truth, if a man should discover all the truth, his report might be thought incredible, and rather seem a libel than a true relation ; and yet I conceive some hope that if we might have a parliament, so that there might be a convocation of all the clergy, there would be some course taken for a reformation in some manner.

Upon our return out of our later circuit, which was about the middle of October, we understood that not many days before the Earl of Tyrone had in a violent manner taken a great distress of cattle from O'Chane [O'Cahan], who hath married his bastard daughter, and pretendeth to be lord of all that country which beareth the name of the county of Colrane, but is now reputed part of the county of Tyrone, and which lying on the west side of the Banne, is as rich and fruitful soil as any in Ulster. I observe not this to you as a matter of any consideration in respect to the riot, (albeit it be the first notorious violent act that the Earl hath done since he was received to grace), but to make an overture to you of a matter of good advantage, which I confess I understood not before I made my last journey into Ulster. . The matter is this : I thought without question, and so it is generally conceived by us all, that the Earl of Tirone had been entirely seized in possession and demesne of all the county of Tirone being in length 60 miles, and in breadth nearly 30, and that no man had had one foot of freehold in that country but himself, except the bishops and farmers of the

abbey lands. I complained to you when I was last in England that this entire possession of so large an extent of land held by one man did hinder the service of the Commonwealth, and gave him too great a power over the goods and bodies of the King's subjects: and thereupon His Majesty was moved by you to write special letters to the Earl and other lords of the North, requiring them to make a competent number of freeholders in their several countries.

The reason that moved us to think that the Earl had the freehold and clear possession of all the country did consist in this:—We know that by the statute of attainder of Shane O'Neale, made in the second year of Queen Elizabeth, all the country of Tirone, and divers other territories in Ulster, were resumed and vested actually in the Crown, without saving the rights of any of the inhabitants, and that afterwards the Queen did grant unto the Earl all the lands, tenements, and hereditaments, which his grandfather Con Baccagh O'Neale had, without any other limitation or exception. But now on the other side, in our last northern journey, we made so exact an inquiry of the estates and possessions of the Irishry, that it appeared unto us plainly that the chief lords of every country had only a seigniorie consisting of certain rents and duties, and had withall some special demesnes, and that the tenants or inferior inhabitants were not tenants at will, as the lords pretended, but freeholders, and had as good and large an estate in their tenancies as the lords had in their seigniories and that the uncertain cuttings and exactions were a mere usurpation and a wrong, and were taken *de facto*, and not *de jure*, when the lords made war one upon

another, or joined together in rebellion against the Crown. This we found to be universally and infallibly true in all the Irish countries, wherein we held sessions this last summer:—namely, in the several counties of M'Mahon, M'Guyre, O'Reley [O'Reilly] in Ulster, and in the countries of the Birnes and Kavanaghs in Leinster. This being found, we began to consider whether the inhabitants of Tirone held not their estates and possessions in the same manner as before the statute of 11 Elizabeth, which swallowed up and confounded both the seigniories, and the tenancies, and vested all in the Crown. And we found by the general voice of all the people in these parts, that O'Neale, the chief lord of that country, had only a chiefry or seignior, with such rents and gross duties as other Irish lords had, with certain demesnes at Dungannon, Benburb, and Strabane; and that there were many freeholders in that county of Tirone, whereof O'Chane was the chief, being also himself in this particular country a chief lord or "Uriaght," having also under him divers free tenants. The case standing thus, we examined the words of the Earl's patent, which we found to be only these: all lands, tenements, and hereditaments, which Con Baccagh O'Neale had at the time of his surrender in 34 Hen. VIII. What had Con Baccagh then? Only a seignior and certain means. Then hath my Lord of Tirone no more granted unto him but only a seignior and certain demesnes, and not the possessions of such as were free tenants at the time of the grant made unto his grandfather, (whereunto his grant hath relation), but their services are only granted unto him; so that these possessions being resumed any

vested in the Crown by the statute 11 Eliz., then do, notwithstanding the Earl's patent, remain in the Crown still; and consequently all O'Chane's country, and all the old freeholders' possessions in Tirone, are actually and really in his Majesty's hands. Howbeit the Earl doth dispose of all that large country, (except some parcels which in his last patent, are reserved to Tirlagh M'Henry O'Neale, Henry Oge O'Neale, and the two forts of Charlemont and Mountjoy,) as if all were his own proper demesnes, and as if all the tenants at will [were his tenants], whereas in truth they are for the most part intruders upon his Majesty's possession.

I might *ex officio*, by reason of the poor place I hold, prefer informations of intrusion against the occupiers of those lands, but in respect of the place where the lands lie, the persons that hold them, and other circumstances, I do forbear to do it without special direction or permission of the Council of State; and to that end I have moved my Lord Deputy and Council, acquainting them with the state of the cause, but they do yet advise thereon; howbeit, I see no reason why the King's ministers should make any doubt to demand the King's own land of any subject here. But, howsoever this course may be yet forborne in reason of State, I am well assured, that, if the King were re-possessed of all his lands in Tirone, namely, the monastery lands and the lands of the ancient freeholders;—if the primate of Armagh were possessed of the lands belonging to his see, and the Bishop of Clogher of the lands appertaining to his bishopric;—if Tirlagh M'Henry and Henry Oge O'Neale may hold their territories, and the

two forts of Charlemont and Mountjoy may enjoy the lands reserved and annexed thereunto;—the greatness of this Earl will be moderate enough, and he will be reduced to that proportion and quantity of estate which O'Neale had before the wars of Lancaster and York, when the Earls of Ulster did flourish there, and when the name of O'Neale was scarce heard of in the English Pale. In a word, if these possessions were rightly distributed and well settled, I think the Earl would not presume any more to write to the King (as he lately did) not to make a President in Ulster for his sake only, as if there were no other Lord in Ulster but himself. I thought it agreeable with my duty to acquaint your Lordship with the state of this cause wherein we shall do nothing without direction out of England; and therefore if your Lordship shall think it a matter worthy of any consideration I humbly beseech your Lordship that we may receive some direction from your Lordship in that behalf, and thus with the humble presentation of my duty and service, I leave your Lordship to the Divine preservation.

Your Lordships most humbly and faithfully to be commanded.—Dublin, 12^o November 1606.

JO: DAUYS.*

* *Pp. 16. Hol. Not add. Endd.*: "Sir John Davies to the Earl of Salisbury."





IV. OBSERVATIONS
TO THE
EARL OF SALISBURY
ON THE
STATE OF IRELAND,
May 10, 1610.*

My most honourable good Lord,

THOUGH I perform this duty, of advertising your Lordship how we proceed in the plantation of Ulster, very late; yet cannot I accuse myself either of sloth, or forgetfulness, in that behalf; but my true excuse is the slow dispatch of Sir Oliver Lambert from hence, into whose hands I thought to have given these letters more than a month since.

In the perambulation which we made this summer over the escheated counties in Ulster, we performed four principal points in our commission.

1. First, the land assigned to the natives, we distributed among the natives, in different quantities and portions, according to their different qualities and deserts.

2. Next, we made the like distribution of the lands allotted to the servitors.

3. Thirdly, we published by proclamation in

*This is also given by Chalmers in his "Historical Tracts" as before. p.p. 273-86 G.

each county, what lands were granted to British undertakers, and what to servitors, and what to natives: to the end that the natives should remove from the precincts allotted to the Britons, whereupon a clear plantation is to be made of English and Scottish, without Irish, and to settle upon the lands assigned to natives and servitors, where there shall be a mixed plantation of English and Irish together.

4. Lastly, to the British undertakers, who are for the most part come over, we gave seizen and possession to their several portions; and assigned them timber for their several buildings.

We began at the Cavan, where, (as it falleth out in all matters of importance) we found the first access and entry into the business the most difficult. Of our proceeding here, my report to your Lordship shall be the larger, because the best precisely in the county fell to your Lordship's lot to be disposed; and the undertakers thereof do still expect to be by your Lordship countenanced and protected. The inhabitants of this country do border upon the English pale, where they have many acquaintances and alliances; by means whereof they have learned to talk of a freehold, and of estates of inheritance, which the poor natives of Fermanagh and Tyrconnel could not speak of; although these men had no other, nor better estate than they; that is, only a scrambling and transitory possession, at the pleasure of the chief of every sept.

When the proclamation was published touching their removal (which was done in the publick session-house, the Lord Deputy and Commissioners being present), a lawyer of the pale, retained by them, did endeavour to maintain that they had

estates of inheritance in their possessions, which their chief lords could not forfeit ; and therefore, in their name, desired two things : first, that they might be admitted to traverse the offices which had been found of those lands ; secondly, that they might have the benefit of a proclamation made about five years since, whereby the persons, lands, and goods, of all his Majesty's subjects, were taken into his royal protection.

To this the King's attorney, being commanded by the Lord Deputy, made answer : That he was glad that this occasion was offered, of declaring and setting forth his Majesty's just title, as well for his Majesty's honour (who, being the most just Prince living, would not dispossess the meanest of his subjects wrongfully, to gain many such kingdoms), as for the satisfaction of the natives themselves, and of all the world ; for his Majesty's right, it shall appear, said he, that his Majesty may and ought to dispose of these lands, in such manner as he hath done, and is about to do, in law, in conscience, and in honour.

In law ; whether the case be to be ruled by our law, of England, which is in force ; or by their own Brehon law, which is abolished and adjudged no law, but a lewd custom.

It is our rule in our law, that the King is Lord Paramount of all the land in the kingdom ; and that all his subjects hold their possessions of him, mediate or immediate.

It is another rule of our law, that where the tenant's estate doth fail and determine, the lord of whom the land is holden may enter, and dispose thereof at his pleasure.

Then those lands in the county of Cavan, which

was O'Relie's country, are all holden of the King; and because the captainship or chiefry of O'Relie is abolished by act of parliament, by stat. 2d of Elizabeth; and also because two of the chief lords elected by the country have been lately slain in rebellion (which is an attainder in law), these lands are holden immediately of his Majesty.

If then the King's Majesty be immediate chief lord of these lands, let us see what estates the tenants or possessors have, by the rules of the common law of England.

Either they have an estate of inheritance, or a lesser estate; a lesser estate they do not claim; or if they did, they ought to shew the creation thereof, which they cannot do.

If they have an estate of inheritance, their lands ought to descend to a certain heir; but neither their chiefries, nor their tenancies, did ever descend to a certain heir; therefore they have no estate of inheritance.

Their chiefries were ever carried, in a course of tannistry, to the eldest and strongest of the sept, who held the same during life, if he were not ejected by a stronger.

This estate of the chieftain or tannist hath been lately adjudged no estate in law, but only a transitory and scrambling possession.

Their inferior tenancies did run in another course, like the old gavelkind in Wales, where the bastards had their portions, as well as the legitimate; which portion they held not in perpetuity, but the chief of the sept did once in two or three years shuffle and change their possessions by new partitions and divisions; which made their estates so uncertain, as that, by opinion of all the judges

in this kingdom, this pretended custom of gavel-kind is adjudged and declared void in law.

And as these men had no certain estates of inheritance, so did they never till now claim any such estate, nor conceive that their lawful heirs should inherit the land which they possessed; which is manifest by two arguments: 1. They never esteemed lawful matrimony, to the end they might have lawful heirs; 2. They never did build any houses, nor plant orchards, or gardens, nor take any care of their posterities. If these men had no estates in law, either in their mean chiefries, or in their inferior tenancies, it followeth, that if his Majesty, who is the undoubted lord paramount, do seize and dispose these lands, they can make no title against his Majesty or his patentees, and consequently cannot be admitted to traverse any office of those lands; for, without shewing a title, no man can be admitted to traverse an office

Then have they no estates by the rules of the common law; for the Brehon law, if it were a law in force, and not an unreasonable custom, is abolished; yet, even by that Irish custom, his Majesty, having the supreme chieftie, may dispose the profits of all the lands at his pleasure, and consequently the land itself; for the land, and the profit of the land, are all one; for he that was O'Relie, or chieftain of the country, had power to cut upon all the inhabitants, high, or low, as pleased him; which argues they held their lands of the chief lord in villainage, and therefore they are properly called natives; for *nativus*, in our old register of writs, doth signify *villein*; and the writ to recover a villein is entitled, *De nativo*

habendo ; and in that action the plaintiff doth declare that he and his ancestors, time out of mind, were wont *tallier haut & bas* upon the villein, and his ancestors; and thence comes the phrase of *cutting*, used among the Irish at this day.

Thus then it appears, that as well by the Irish custom, as the law of England, his Majesty may, at his pleasure, seize these lands, and dispose thereof. The only scruple which remains consists in this point:—Whether the King may, in conscience, or honour, remove the ancient tenants, and bring in strangers among them.

Truly his Majesty may not take this course lawfully, but is bound in conscience so to do.

For being the undoubted rightful King of this realm, so as the people and land are committed by the Divine Majesty to his charge and government, his Majesty is bound in conscience to use all lawful and just courses to reduce his people from barbarism to civility: the neglect whereof, heretofore, hath been laid as an imputation upon the crown of England. Now civility cannot possibly be planted among them, but by this mixt plantation of civil men, which likewise could not be without removal and transplantation of some of the natives, and settling of their possessions in a course of common law; for if themselves were suffered to possess the whole country, as their septs have done for many hundred of years past, they would never (to the end of the world) build houses, make townships, or villages, or manure, or improve the land as it ought to be; therefore it stands neither with Christian policy nor conscience, to suffer so good and fruitful a country to lie waste like a wilderness, when his Majesty may lawfully

dispose it to such persons as will make a civil plantation thereupon.

Again, his Majesty may take this course in conscience, because it tendeth to the good of the inhabitants many ways; for half their land doth now lie waste, by reason whereof that which is habited is not improved to half their value; but when the undertakers are planted among them (there being place and scope enough both for them, and for the natives), and that all the land shall be fully stocked and manured, 500 acres will be of better value than 5000 are now. Besides, where before their estates were altogether uncertain and transitory, so as their heirs did never inherit, they shall now have certain estates of inheritance, the portion allotted unto them, which they, and their children after them, shall enjoy with security.

Again, his Majesty's conscience may be satisfied, in that his Majesty seeks not his own profit, but doth suffer loss by this plantation, as well in expence of his treasure as in the diminution of his revenue; for the entertainment of commissioners here and in England, and the extraordinary charge of the army for the guard of the Lord-Deputy and Council, in several journies made into Ulster about this business only, hath drawn no small sum of money out of his Majesty's coffers, within these three years: and whereas Tyrone did the last year yield unto his Majesty 2000*l.* for four years to come, it will yield nothing; and afterwards the fee-farm of the undertakers will not amount to 600*l.* per annum.

Again, when a project was made for the division of that country about twenty years since, Sir John O'Relie being then chief lord and captain, they

all agreed (before divers commissioners sent from the State to settle that country) that Sir John O'Relie should have two entire baronies in demesne, and 10s. out of every poll in the other five baronies; which is much more than his Majesty, who hath title to all the land in demesne, as well as to the chiefry, hath now given to undertakers, or reserved to himself.

Lastly, this transplantation of the natives is made by his Majesty rather like a father than like a lord or monarch. The Romans transplanted whole nations out of Germany into France: the Spaniards lately removed all the Moors out of Grenada into Barbary, without providing them any new seats there: when the English Pale was first planted, all the natives were clearly expelled, so as not one Irish family had so much as an acre of freehold in all the five counties of the Pale: and now, within these four years past, the Grahams were removed from the borders of Scotland to this kingdom, and had not one foot of land allotted unto them here: but these natives of Cavan have competent portions of land assigned unto them, many of them in the same barony where they dwelt before, and such as are removed are planted in the same county, so as his Majesty doth in this imitate the skilful husbandman, who doth remove his fruit trees, not with a purpose to extirpate and destroy them, but that they may bring better and sweeter fruit after the transplantation.

Those and other arguments were used by the Attorney to prove that his Majesty might justly dispose of those lands both in law, in conscience, and in honour; wherewith the natives seemed not unsatisfied in reason, though they remained

in their passions discontented, being much grieved to leave their possessions to strangers, which they had so long after their manner enjoyed ; howbeit my Lord-Deputy did so mix threats with entreaty, *precibusque mnias regaliter addit*, as they promised to give way to the undertakers, if the Sherrieff by warrant of the Commissioners did put them in possession : which they have performed like obedient and loyal subjects. Howbeit we do yet doubt that some of them will appeal into England, and therefore I have presumed to trouble your Lordship with this rude discourse at large, that your Lordship may understand upon what grounds we have proceeded, especially in that county where your Lordship's precinct doth lie.

The eyes of all the natives in Ulster were turned upon this county ; therefore when they saw the difficulty of the business overcome here, their minds were the better prepared to submit themselves to the course prescribed by his Majesty for the plantation ; and the service was afterwards performed in the rest of the counties with less contradictions. The British undertakers are preparing their materials for the erection of their buildings the next Spring : the servitors and natives are taking out their letters-patent with as much expedition as is possible. The agents for London have made better preparation for the erection of their new city at Colrane than expected : for we found there such store of timber and other materials brought in places, and such a number of workmen so busy, in several places, about their several tasks, as methought I saw Dido's colony erecting of Carthage, in Virgil.

Instant ardentēs Tyrii : pars ducere muros,

Molirique arcem, & manibus subvolvere saxa:
Pars optare locum tecto, & concludere sulco.

.....

Fervet opus, &c.

Thus, craving pardon and presenting my humble service to your Lordship, I leave the same to the divine preservation, and continue your Lordship's in all humble duties,

JO. DAUYS.

Dublin, 8th Nov.
1610.

P O S T S C R I P T .

This worthy servitor, Sir Oliver Lambert, is like to prove a good planter in the county of Cavan; whereof he hath made better proof than any man of our nation, having, at his own charge, voluntarily made a singular good plantation in the wild and most dangerous places in Leinster, more for the commonwealth than his own profit.



III.
SPEECHES IN IRELAND.

NOTE.

These two Speeches are from Sloane MS. 4793. On the Speakership, see our Memorial-Introduction. As before the original spelling is reduced to present usage. In Notes and Illustrations at close of this volume, certain from Dr. Leland, bear his initial (L)—G.



1. THE SPEAKER'S FIRST SPEECH

WHEN HE WAS PRESENTED

IN THE HIGHER HOUSE, 21ST MAY, 1613.

From Sloane M.S.S. 4793, fo. 57.

MOST honourable Lord and right worthy Deputy of our most invincible, renowned and gracious Sovereign, I am here presented unto your Lordships by these worthy Knights and Burgesses representing the State of the Commons in this kingdom, to be their Speaker in this High Court of Parliament.

To this place of Speaker, they have elected me orderly, and duly, according to your Lordships direction, and according to the ancient privileges and orders of that House; which election being not only a voluntary, but a judicial act of theirs, I may not presume to say it is erroneous; I will not assign any error in their judgment, for the reverence I bear to the authority and infallible wisdom of that Council. Howbeit by way of exception to mine own weakness and disability, I have appealed from that election to your Lordships wisdom and judgment, which appeal as it is lawful, so it is most proper in this case; for that neither the election nor presentation can take any further effect without your Lordships approbation and assent, which is indeed the Royal assent itself.

That the Commons assembled in Parliament should have one common Speaker for them all, is doubtless a matter, not only of custom and conveniency, but also of necessity for the managing and dispatch of the public business ; for the Tower of Babel may be an example to all assemblies, that where there is a confusion of tongues, great works can never go well forward.

But this Speaker as he must speak for all, being first selected out of all, and elected by all, or the greater part, so should he be the best able of all to discharge this place of service ; for he that must be the tongue and voice of so many eloquent men, he that must deliver the knowledge of so many learned men, he that must pronounce the judgments of so many grave and wise men, had need have the quintessence or spirit of all their gifts and perfections to qualify him, and to make him sufficient for such an employment.

For it is not enough for him to be meanly enabled to be tolerable and reasonably well, but he had need be passing well furnished, he had need be accomplished singularly well with all gifts and graces, with all the abilities and ornaments that are required in an excellent Speaker.

He had need have a quick conceit and apprehension, a large and a faithful memory, a deep and a sound judgment, and a long practice and experience in all the affairs of the Commonwealth, and withall and above all, he ought to have a singular facility and elegance of speech, whereby he may be able upon all occasions to speak readily, roundly, plentifully, properly, orderly, judiciously and wisely of all matters that shall arise, matters of State, matters of law, matters of the church and of

the crown, the causes or cases of particular men, and the general state of the Commonwealth. In a word, whereas every other profession hath a particular science sufficient to enable the professor thereof, [so] it is [in this] profession, for there is no state or condition of men, no occasion, no accident, but may happen to be a subject for him to speak of. So as it is not sufficient for such a speaker to have a volubility of tongue only, or a current or stream of words, but he should have a fountain of knowledge in him, out of which his speech should spring, result, and flow plentifully. He should have withall a clear understanding of things, to make his speech lively, quick and significant; for it is the clearness of a man's conceit, that doth give life and spirit unto his words. I omit to speak of the continual use and practice that he ought to have, both of his tongue and stile, the singular care and diligence that he ought to have to be thoroughly instructed in every cause that he undertakes to speak in, the clearness and sweetness of his voice, the comeliness of his gesture, the assuredness of his countenance, and the life and spirit of his pronunciation,

These and many other like gifts and abilities are needful and requisite in a perfect Speaker, and such a one, I doubt not your Lordship doth expect, you look for such a one to be presented at this time unto you. But am I the man then? am I he? that shall answer your Lordship's expectations in this? No (my noble Lord) by no means; for my abilities are so mean and my imperfections are so many, as I begin to shrink already under the burden, before it be fully imposed upon my shoulders, otherwise I protest unfeignedly that if I could

speak with the tongues of men and Angels, that is, if I had all the best abilities of speech and understanding in the world, I would most gladly employ them all, and think all too little for the honour and service of that House.

Besides I do so much esteem the authority and judgment of those that elected me, as if I did not perfectly know and feel my own imperfections, I could easily persuade myself that their good opinion were sufficient to enable me, and make me capable of this employment.

But I am so well acquainted with myself and do know so well *Quid valeant humeri, quid ferre recusent*, and this knowledge doth make me so sensible of my own weakness and disability, as neither their opinion, which in all other matters must be an oracle unto me, nor self-love itself, which doth flatter every natural man more or less, and doth raise his imagination when there is any colour of worthiness in him, can possibly make me think myself able to discharge this place with any sufficiency. And therefore under your Lordships favour, I am far from taking this charge upon me, as I am from ability of discharging it; and I am so far from answering your Lordships expectation, as I fear this rude and imperfect Speech, doth move you already in your inward conceit to condemn the judgment of these gentlemen in presenting an Infant instead of a Speaker. And yet I have now spoken in such an agreement as I am best able to handle of any other, I mean, in the disabling of myself, for therein I cannot choose but speak sensibly having so perfect a sense and feeling of my own disabilities.

Wherefore my humble suit unto your Lordship

is that either in your judgment your Lordship will pronounce a nullity in this election, or in your fulness of power dispense with my attendance in this place; and therefore that your Lordship would be pleased to require these worthy knights and Burgesses once again to proceed to a new election of a more able and worthy Speaker, which they may easily and speedily do, for that there was never so plentiful choice of grave learned and sufficient gentlemen of the Commons assembled in any parliament, since the first institution of parliaments in this kingdom.





II. THE SPEAKER'S SECOND SPEECH IN THE HIGHER HOUSE

WHEN THE
LORD-DEPUTY HAD APPROVED
HIS ELECTION.*

Most Honourable and Right Noble Lord,
SINCE your high wisdom (unto which I humbly made my appeal) hath not thought it fit to repeal, but rather to ratify and confirm the judgment of these worthy knights and burgesses in electing me (yet still unworthy in my own opinion) to be their Speaker (which your Lordship I doubt not hath been pleased to do, not in regard of any worthiness appearing in me, but for the honourable respect you worthily bear to that grave and wise assembly that made the election); I do humbly and absolutely submit myself to your Lordship's pleasure: and since these gentlemen have first conferred upon me, and now your Lordship hath confirmed unto me, the name and office of a Speaker, I will presume (with your Lordship's

*From Sloane MSS. 4793, (as before): This Speech was first published by Dr. Leland, and it was reprinted by Chalmers, (as before) p.p. 289-313 where it is mis-dated 2nd May, instead of 21st May, 1613. The former and this Speech were delivered on the same day. G.

grace and favour) to speak somewhat in this great and entire assembly of all the States of this kingdom, that shall be proper and agreeable to the circumstances of the time, of the place and of the persons that are here assembled.

It is a saying, and a rule of the wisest king that ever lived, *ubi multa consilia, ibi salus populi*; and it is the direction of the wisest king now living, that a common council shall be holden at this time and at this place, for the common good of the kingdom of Ireland.

Such common councils, or assemblies of states, are usual in all States and Commonwealths in one form or another, and in divers countries are called by divers names; but under the English monarchy, and the French, which are the two best-tempered monarchies in the world, they are called Parliaments.

These Parliaments, though they consist of three different estates, the King, the Nobility, and the Commons, yet, as in musick distinct and several notes do make a perfect harmony, so these Councils compounded of divers states and degrees being well ordered and timed, do make a perfect concord in a Commonwealth. *Nam quæ harmonia dicitur a musicis in cantu, ea est in civitate concordia*, saith Cicero; and this concord and harmony of hearts doth ever produce the safety and security of the people, which is the *salus populi* that Solomon speaks of. Whereof there cannot be a more certain demonstration than this, that these two kingdoms, which have been ruled by these Parliaments, are now the most ancient imperial monarchies of Christendom, and are withal two of the most flourishing Common-

wealths that are to be seen upon the face of the earth.

But what doth this concern this kingdom of Ireland, or what application hath it to the place and persons present? Assuredly when I speak of the monarchy of England, I *include the kingdom of Ireland within the circle of that imperial Crown.*

For the Kings of England no sooner were Lords of Ireland, but they made a real union of both these kingdoms, as is manifest by authentic records of the time of King John and King H. III. so as Ireland became but as a member, *quasi membrum Angliæ*, as it is resolved by all the justices in 3 H. VII. It became a member appendent and belonging, as the act of faculties 28 H. VIII. calls it, or united and annexed to the imperial Crown of the realm of England, as the statute of 33 H. VIII. (which gave to that prince the title of King of Ireland) doth term it.

And now at this day (God be blessed) the subjects of both realms have but one King, which is the renowned King of England; and are ruled and governed by one common law, which is the just and honourable common law of England; and as there is now but one common law, so for the space of 140 years after King H. II. had taken possession of the lordship of Ireland, there was but one Parliament for both kingdoms, which was the * * * * * all that time. But the laws made in the Parliaments of England were from time to time transmitted hither under the great seal of that kingdom, to be proclaimed, enrolled, and executed as laws of this realm.

In this manner was the great charter of the ancient liberties of the English subjects, the statutes

of Merton and Marlebridge, sent over by King John and King H. III. the statutes of Westminster, the first, second, and third, and the statute of Gloucester by King Edw. I. the statutes of Lincoln and of York by King Edw II.

Among the rest, that of Westminster the second, and that of York, in their several preambles do make express mention of the people and land of Ireland, as well as of England, where the laws were made.

All the statutes, together with the warrants and writs, whereby they were transmitted, we find enrolled, and preserved to this day among the records of this kingdom.

But when then ? how long since ? in what King's reign was this great common council, this high Court of Parliament, erected first and established in Ireland ?

Doubtless, though the rest of the ordinary courts of justice began with the first plantation of the English colonies here, yet the wisdom of the State of England thought it fit to reserve the power of making laws to the Parliaments of England for many years after.

So as this high extraordinary court was not established in Ireland by authority out of England, for many years after in the form that now it is, till towards the declining of King Edward the Second's reign. For before that time, the meetings and consultations of the great lords with some of the commons, for appeasing of dissensions among themselves, though they be called Parliaments in the ancient annals, yet being without orderly summons, or formal proceedings, are rather to be called parlies than Parliaments.

But by what reason of state was the State of England moved to establish this court of Parliament in Ireland at that time?

Assuredly this common council was then instituted when Ireland stood most in need of council; for under the conduct of Edward le Bruis, the Scottish nation had over-run the whole realm. England had the same enemy at her back, and the barons' rebellion at her bowels; and so, being distracted in herself, could give neither consilium nor auxilium to the distressed subjects here, so as they, being left to their own strength and council, did then obtain authority from the State of England to hold this common council of the realm among themselves, for the quenching of that common fire, that had almost consumed the whole kingdom.

And this, by the testimony of the best antiquaries, was the first time, and first occasion of instituting this High Court of Parliament in Ireland.

But now why should I not (with your Lordship's favour) proceed further, and take a brief view of the principal parliaments that have been holden in Ireland since that time, and therein note and observe what were the motives from time to time of calling these common councils, and what and how many the persons were, that were wont to be called thereunto, that it may appear by way of comparison how far this parliament is like to excel all former Parliaments holden in this kingdom, not only in the felicity of the time, but in all their circumstances whatsoever.

Certain it is, that the incursion of the Scots, and the insurrection of the Irish concurring with it, and the intolerable oppression and extortion of the

great lords of the realm, under colour of maintaining that army, that should repel the one, and repress the other, brought such misery and desolation upon this land about the latter end of Edward the III.'s reign, as the English Colonies of the Provinces, without the English pale, fell for the most part into such corruption of manners, as it became a greater labour to reform them by the law, than to conquer their enemies by the sword.

Therefore in the beginning of the reign of King Edward III. Sir Anthony Lucye did summon and hold one Parliament, and Sir Ralph Ufford another, and the principal cause of holding both these Parliaments was to repress the insolencies and reform the abuses of the great lords descended of English race, of which the Earl of Desmond was the most exorbitant offender.

And after that, during the same King's reign, Sir Thomas Rookesby at one time, and Lionel Duke of Clarence at another, held several Parliaments at Kilkenny, which tended to no other end but to reduce the degenerate English in general from the barbarous customs of the Irish to their ancient civil manners, and the obedience of their true mother the State of England.

After this we find the same cause still to continue, of calling the succeeding Parliaments in this realm, until the wars of Lancaster and York began, which made a great alteration in both kingdoms.

For if you look into the parliament-rolls of those times, which are mean between the 40th year of King Edward III. and the 30th year of King H. VI. we shall first find the statutes of

Kilkenny confirmed in every Parliament, and then the laws of principal consideration are against coin and livery, sess of soldiers, night suppers, cumrick, and the like extortions and lewd customs, which the English had learned among the Irish.

So as for the space of 140 years after the first erecting of this high court in Ireland, it is apparent, that never any Parliament was called to reduce the Irish to obedience, or to perfect the conquest of the whole Island, but only to reform the English Colonies that were become degenerate, and to retain the sovereignty of the Crown of England over them only, and to no other end or purpose.

But when the civil war in England between the Two Houses was thoroughly kindled, that fiery constellation made such an impression upon this realm also, as the Nobility following the several factions of England fell into the like dissention here, which gave the Irish opportunity to reconquer the greatest part of the English Colonies, who thereupon fell into such a relapse of barbarism, as the fruit of the former Parliaments was utterly lost, and no part of the realm but these four shires of the pale left under the obedience of the law of England.

But what did the governors of this kingdom then, when the jurisdiction of the law was drawn into so narrow a compass? Did they summon any more Parliaments, or did they omit to call the common council of the realm, for that the greatest part of the realm had rejected the English law and government?

Assuredly they were so far from that neglect, or omission, as Parliaments were never called so often,

nor so thick one upon another as in the times of King H. VI. and King Edward IV. for scarce there passed a year without a Parliament, and sometimes two or three Parliaments were summoned and held within the compass of a year, which was such a trouble and charge to the subject, as a special law was made, that there should be but one Parliament held in a year.

But to what end did they call many Parliaments? What matters did they handle in these common councils? Did they consult about the recovery of the Provinces that were lost; or about final subduing of all the Irish? We find no such matter at all propounded; but we find in the Parliaments in the rolls of that time, an extraordinary number of private bills and petitions answered and ordered in parliament, containing such mean and ordinary matters, as, but for want of other business, were not fit to be handled in so high a court.

And such were the motives of calling the Parliaments in this kingdom, and the matters therein debated, during the wars of York and Lancaster, and after that likewise until the tenth year of King H. VII.

In that year, which was the tenth year after the uniting of the Roses, as now it is full ten years since the uniting of the kingdoms under one imperial Crown (a happy period of time, we hope, for holding of a Parliament in this kingdom): In that year did Sir Edward Poynings summon and hold this famous Parliament, wherein doubtless he showed a large heart, and a great desire of a general reformation, and to that end procured many general laws to pass, which we find most

profitable and necessary for the commonweal at this day.

Among the rest he caused two laws to be made which may rightly be called *leges legum*, being excellent laws concerning the laws themselves, whereof one did look backward to the time past, and gave a great supply to the defects of former Parliaments, by confirming and establishing at once in this realm all the statutes formerly made in England.

The other looked forward to the time to come, by providing that from henceforth there should be no Parliament holden here, until the acts which should be propounded were first certified into England, and approved by the King and his Council there, and then returned hither under the great seal of that realm.

This latter act is that we call Poynings' act, and is indeed that act of Parliament, which is a rule for our Parliaments unto this day.

But these acts passed by Sir Edward Poynings, though they were made and meant for the general good, and gave indeed the first overture for the general reformation that has followed since that time, yet could they not produce so good and great an effect as was intended by those laws, because that more than three parts of four of this kingdom at least were then and long after possessed by the Irish and unreformed English, which were not answerable to the law.

As for the principal Parliaments which have been holden since that time, during the reigns of King H. VIII. Queen Mary, and Queen Elizabeth (for King Edward VI. did call no Parliament in Ireland); they were all summoned upon special

and particular occasions, and not for the general settlement of the whole kingdom.

For to what end was the Parliament holden by the Lord Leonard Gray in 28 H. VIII. but to attain the Giraldines, and to abolish the usurped authority of the Pope?

Wherefore did Sir Anthony St. Leger call the next Parliament after in 38 H. VIII. but to invest that Prince with the title of King of Ireland, and to suppress the abbeys and religious houses?

To what purpose did Thomas Earl of Sussex hold his first Parliament in 3 & 4 of King Philip and Queen Mary, but to settle Leix and Offaly in the Crown?

And his second in the second year of Queen Elizabeth, but to re-establish the reformed religion in this kingdom?

What was the principal cause that Sir Henry Sidney held a Parliament in the 11th year of Queen Elizabeth, but to extinguish the name of O'Neale, and entitle the Crown to the greatest part of Ulster?

And lastly, what was the chief motive of the last Parliament holden by Sir John Perrott, but the attainder of two great peers of this realm, the Viscount Baltinglas, and the Earl of Desmond, and for vesting of their lands, and the lands of their adherents, in the actual possession of the Crown?

And now having made a summary collection of the principal causes of summoning the former Parliaments, which from time to time have been holden since the first institution of this high court in Ireland, I must not forget to note also unto your Lordship, what and how many persons were called in former times to make up the body of this great council.

For the persons before the 33d year of King H. VIII. we do not find any to have had place in Parliament, but the English of blood, or English of birth only; for the mere Irish in those days were never admitted, as well because their countries lying out of the limits of counties, could send no knights, and having neither cities nor boroughs in them, could send no burgesses to the Parliament; besides, the State did not then hold them fit to be trusted with the counsel of the realm.

For the number since before the 34th year of King H. VIII. when Meath was divided into shires, there were no more than twelve counties in Ireland, besides the liberty of Tipperary; the number of knights must needs have been few; and since the ancient cities were but four, and the boroughs which sent burgesses not above thirty, the entire body of the whole House of Commons could not then consist of one hundred persons; and though Queen Mary did add two shires, and Queen Elizabeth seventeen more, to increase the number of knights in that House, yet all did not send knights to the Parliament; for the remote shires of Ulster returned none at all.

For the lords temporal, though they are yet but few, yet was the number less before King H. VIII. was styled King of Ireland; for since that time divers of the Irish nobility, and some descended of English race, have been created both earls and barons.

And lastly, for the bishops and archbishops, though their number was greater than now it is, in respect to the divers unions made of latter years, yet such as were resident in the mere Irish countries, and did not acknowledge the King to be

their patron, were never summoned to any Parliament.

And now, by way of comparison, it may easily appear unto your Lordship how much this first Parliament, now begun under the blessed government of our most gracious King James, is like to excel all former Parliaments, as well in respect of the cause and time of calling it, as of the persons that are called unto it.

For this Parliament (God be blessed) is not called to repel an invasion, or to suppress a rebellion, or to reduce degenerate subjects to their obedience. It is not summoned to pass private bills only, or to serve private turns, or for any one special service for the Crown, though such have been the occasions and causes of calling the most part of the former Parliaments.

But now since God hath blessed the whole island with an universal peace and obedience, together with plenty, civility, and other felicities, more than ever it enjoyed in any former age; this general council of the whole realm is called now principally to confirm and establish these blessings unto us, and to make them perpetual to our posterities.

Again, this Parliament is not called in such a broken and miserable time, that we need complain in our bills and petitions of the miseries and calamities of this kingdom; whereas the rolls of former Parliaments are full of such complaint; but it is called as it were in the year of jubilee, or upon the sabbath of this land, being now at rest after all her travails, which lasted 400 years together.

It is called in the time of greatest security, and

in the most joyful and happy time that ever did shine upon the inhabitants of this kingdom.

Again, It is not called in such a time as when the four shires of the pale only did send their barons, knights and burgesses to the Parliament, when they alone took upon them to make laws, to bind the whole kingdom, neglecting to call the subjects residing in other parts of the realm unto them, as appeareth by that Parliament holden by the Viscount of Gormanston, which Sir Edward Poyning, in the tenth year of King Hen. VII. caused to be utterly repealed, and the acts thereof made void, chiefly for that the summons of Parliament went forth to the four shires of the pale only, and not unto all the rest of the counties.

But it is called in such a time, when this great and mighty kingdom, being wholly reduced to shire ground, containeth thirty-three counties at large; when all Ulster and Connaught, as well as Leinster and Munster, have voices in Parliament by their knights and burgesses; when all the inhabitants of the kingdom, English of birth, English of blood, the new British colony, and the old Irish natives, do all meet together to make laws for the common good of themselves and their posterities.

To this end his Majesty hath most graciously and justly erected divers new boroughs in sundry parts of this kingdom. I say his Majesty hath done it most justly, even as his Highness himself hath been pleased to say, that he was obliged in justice and honour to give all his free subjects of this kingdom in different and equal voices in making of their laws, so as one half of the subjects should not make laws alone, which should bind the other

half without their consents.

Neither is this a new or strange precedent, for his Majesty doth but follow the steps herein of his next predecessors which went before him.

Queen Mary made two counties of Leix and Offaly, whereby they were enabled to send knights to the Parliament; but she erected boroughs in these new counties also, that they might send burgesses as well as knights.

In Queen Elizabeth's time, Sir Henry Sidney made sundry counties in Connaught, immediately before the Parliament, which he held in the 11th year of that Queen.

And after him Sir John Perrott did the like in Ulster, near about the beginning of the last Parliament: out of these new counties, so many knights were added to the Lower House, yet no man took exception thereunto.

This did Queen Elizabeth in her time: what hath King James done now? Whereas the Queen had omitted to make boroughs in these new counties, the King hath now supplied that defect, by making these new corporations we speak of; for why should all your old shires have cities and boroughs in them, and these new counties be without them; or shall Queen Elizabeth be able to make a county, and shall not King James be able to make a borough?

But what proportion is there now observed between the number of the counties, that before this time had no boroughs in them, and the number of boroughs newly erected?

Certainly the number of these new boroughs, compared with the counties that never had any burgesses before this time, doth carry a less propor-

tion than the ancient boroughs, compared with the number of the ancient counties; for in those twelve or thirteen old shires, there are thirty cities and boroughs at least, which send citizens and burgesses to the Parliament.

Whereas for seventeen counties at large, being more than half the shires of this kingdom, which had not one borough in them before this new erection, his Majesty hath now lately erected but forty new boroughs, or thereabouts, which in the judgment of all indifferent men must needs seem reasonable, just, and honourable.

Lastly, this Parliament is called in such a time, when all the lords spiritual and temporal do acknowledge the King of England to be their undoubted patron; and when all the lords temporal do appear in an honourable fashion like themselves none of them (God be thanked) claiming any such privilege, as the undutiful Earl of Desmond was wont to claim, that he should never be summoned to come within any walled town, nor to any Parliament or grand council, but at his own will and pleasure.

Whereupon, I may positively conclude, that this present Parliament, now begun by your Lordship, doth pass and excel all former Parliaments that ever were holden in this kingdom, as well in the happiness of the time wherein it is called, and the importance of the cause for which it is called, as in the number and worthiness of the persons which are called thereunto.

And this doubtless is a great honour and happiness unto your lordship above all the former viceroys of this kingdom, for that your lordship doth now hold the first Parliament, that may

justly be called a common council, wherein all the commons throughout the kingdom are present, and have free voices by their knights and burgesses; a felicity and a glory that many of your predecessors, zealous of the reformation of this kingdom, did exceedingly desire, but could never attain unto it.

How glad would Sir Henry Sidney have been to have seen this day; he that so much desired to reduce Ulster, but could never perfectly perform it: what honour would he have thought it unto himself, if he might have held a Parliament, unto which that province should have sent so many worthy knights and burgesses as now it doth?

How joyful would Thomas Earl of Sussex have been to have seen the statute he caused to be made for reducing the Irish countries into shire ground, to have taken so good effect as now it hath, since all these countries are now brought into counties, and do all send knights to serve in this Parliament?

In a word, Sir Edward Poynings in the time of King H. VII. and Lionel Duke of Clarence, in Edw. IIIId.'s time, if they could have seen but half such an assembly in their Parliaments, would have thought themselves happy and highly honoured; and yet those Parliaments, holden by them, are the most famous Parliaments that have been formerly holden in this kingdom.

And truly, as your Lordship hath more honour in this respect than any of your predecessors, so I may justly say without adulation, that your Lordship hath merited this particular honour more than any of them that have gone before you.

For if it be an honour unto you to hold such a

Parliament, you do but reap the fruit of your own labours, since yourself principally have prepared the way to this Parliament, as well by your martial virtue in time of war, as by your justice and policy in the time of peace.

For hath not your Lordship (I humbly crave your Lordship's pardon, I will not presume to ask you the question) but I will ask these reverend prelates and noble lords, these grave and learned judges, these worthy knights and burgesses; I will ask them the question: hath not this most noble deputy been a principal author of the reformation of this kingdom: was not his fortitude one of the chief instruments for suppressing the late rebellion; and hath not his justice since that time established the public peace of the kingdom?

Hath he not acted his part so well upon this theatre of honour, as no man is ambitious to come upon the stage after him, knowing it is more easy to succeed him in his place, than to follow him in his painful and prudent course of government, and that he must be as strong as Hercules to undergo the burthen that such an Atlas hath borne before him?

Nay, hath not himself performed Hercules' labours in suppressing more monstrous enormities in Ireland, than Hercules himself did destroy monsters, when he fought adventures over all Europe?

I ask not these questions, as if any man here were doubtful or ignorant of his noble virtues and deserts; but as praise is nothing but a reflection of virtue, so should it be delivered rather collaterally than directly, to avoid suspicion of direct flattery, which I know your Lordship loveth not,

as I know your Lordship needs it not.

Nevertheless, Right Honourable Lord (for now I must convert my speech to your Lordship), though you have no need of my praise, yet it is most needful in respect of the place you hold, that your Lordship should be adorned with all praiseworthy virtues. You had need be a virtuous and most worthy deputy, since you sit in the throne, and represent the person of the most virtuous and excellent king in the world.

For he that doth fight with the sword of a king, write with the pen of a king; he that hath the justice, mercy, and bounty of a king in his hands, had need be furnished with those noble powers, and virtues as are fit for the rule and government of a kingdom, especially if he hold the place of such a king as our most renowned and gracious Sovereign is, who is the greatest and best king that now reigneth upon the face of the earth.

I call him the greatest king, not so much for the largeness and extent of his territories, nor for the multitude of his subjects, though he be in possession of three great kingdoms, and doth command more martial and able men than any king in Europe at this day.

But I will call him indeed the greatest king for his exceeding great measure of goodness and virtue, and for the great grace and favour that his Majesty standeth in with the divine Majesty the King of Kings.

For if that man be accounted the greatest subject of a kingdom that is in highest favour with a king upon earth, why should not that king be the greatest king on earth that is in greatest favour with the King of Heaven?

And that our most gracious Sovereign standeth in highest favour with Almighty God, doth not only appear by the innumerable blessings poured from heaven upon him, and upon his kingdoms for his sake, by the special providence and care God hath always had of his sacred person, by protecting and delivering him from his enemies.

Again, I will call his Majesty the best king, for that he is a most just king, and justice is the best of all kingly virtues; and for that also he is a most bountiful king, resembling therein the divine goodness, ever spreading and communicating his riches unto others, which we must needs remember in this kingdom; for we cannot forget it without ingratitude, since we all know that his Majesty doth not only expend the whole revenue of this land upon itself, but spares yearly out of England, a great mass of treasure to support the extraordinary charge thereof, out of which the greater number of us here present, by entertainments, pensions, or rewards, do taste every day of his Majesty's bounty.

Lastly, his Majesty ought to be called the best king, as well for his sweet inclination to peace, whereby he doth make happy both his own dominions, and also his neighbour kingdoms round about him, as for his singular piety and religion towards God, which is the best and highest praise that can be given to any Prince.

But I should launch forth into a main sea, that hath neither bottom nor shore, if I should proceed further in the praise of such a Prince, whose worthiness exceeds all degrees of comparison; it is a theme too high and too large for me to handle: it becometh me better to give thanks than praise.

And, therefore, I will conclude with most humble thanks first unto Almighty God for giving us such an excellent king; then unto our most gracious king for appointing us so worthy a deputy; and lastly unto our noble deputy for all his good services and endeavours, tending so much to the honour of God and the King, and the general good of the whole kingdom.

And now I descend unto these humble petitions which I am to make, &c.

(Wherein he most humbly requesteth that the ancient rights and privileges of the House of Commons, in freely delivering their speech and minds, and of being free from arrests, as well themselves as their servants, during the time of Parliament, might be kept whole and untouched; and if that in any thing not well by them understood, they should happen to offend, he requesteth leave, as well for himself as for the rest, to have access unto his Lordship).



IV. CHARGE TO THE JURORS
OF
THE GRAND INQUEST
AT
YORK.

NOTE.

There are several MSS. of this Charge, e.g. (a) Harleian MSS., 1222. (b) Harleian MSS., 7581. (c) In possession of A. Cooper Ramgard, Esq., Barrister, London. By the kindness of T. E. Martin, Esq., Librarian of the Inner Temple, I am enabled to print from the last, which proved on collation to be much the best. This eloquent and learned charge has never before been printed. As before the ancient spelling is conformed to present usage. G.



SERJEANT DAUYS—HIS CHARGE.

DELIVERED TO THE

JURORS OF THE GRAND INQUEST:

FOR THE

MAINTAINING AND CONTINUING

THE PUBLIC PEACE

BY THE

EXECUTION OF JUSTICE.

YOU my Masters that are sworn, I am to direct my Speech principally unto you ; and when I speak to you, I conceive I speak to a great part of this county, for you represent the body of the county where you live. Therefore, my Masters, you being selected out of a part of the freeholders of this county to bear a principal part in this public service ; and the greater the service is, the greater is the charge, and the more attentive you ought to be in hearkening to your charge, and the more careful and diligent in the performance of it.

THE SCOPE AND END OF THIS SERVICE.

The service that we are to perform at this time, is to maintain and continue the public peace, by the execution of the public justice ; a work so noble and so worthy, as I doubt whether any

temporal business that can be made or done in the life of man, be comparable to it. What a worthy and meritorious work it is, to maintain the public peace of the Country, will easily appear unto you, if you consider a little with me what the public peace is, and what are the fruits of such a peace.

WHAT THE PUBLIC PEACE IS.

The public peace is *tranquilitas ordinis in Republica* (saith the Schoolmen); when things are stated and settled in a calm and quiet order, without tumult or without trouble, like that which is called harmony in music, when the strings of an instrument are all in tune, without jarring and without discord; and this tranquility or harmony, this quiet state of things in a Commonwealth, is the most precious jewel, the sweetest blessing and benefit that men can enjoy under the sun.

THE EFFECT OF A PUBLIC PEACE.

For the fruits and effects of a public peace, you will easily apprehend what they are; for you have them (God be thanked), you enjoy them at this present, and so you have done for many a year. The public peace is the cause that your fruitful fields are so well manured, your barren wastes converted, your herds and flocks increased, your cities and towns enlarged, trade and traffic by sea and land freely entertained, and all the commodities of the earth improved. In these halcyon days of peace, all arts and sciences, both liberal and mechanical have been taught to perfection, and have produced and daily do produce innumerable things as well for pleasure and ornament as for the necessary use of the life of man in the Commonwealth; and in the Commonwealth the Church of

God dóth flourish, the Gospel hath a more free passage and Religion herself takes deep root; in a word, every man doth sit under his own vine and under his own fig tree, and enjoyeth the fruit of his own labours, which are the chiefest felicity that the heart of man desires in this life.

If then the public do produce such excellent effects, it must needs be a good and excellent work to maintain and preserve this peace amongst you, and to make it perpetual to you and yours.

THE EFFECT OF THE PUBLIC JUSTICE.

But by what means may this be done? how may the public peace be maintained and preserved? Doubtless by the execution of the public justice. *Justitia et pax exosculata sunt invicem*, Justice and Peace have kissed each other, as it is in the Psalm; for as peace is the nurse and mother of plenty, *Pax Cererem nutrit, Pacis Alumna Ceres**; so Justice is the mother and nurse of Peace; for the scope and end of Justice is to appease all tumults, to end all controversies, and to repose and settle all men and matters in quiet and in safety; and therefore it is said, that Justice maketh a hedge about every man's field, though there be no other inclosure; that she keepeth watch and ward on every man's goods and maketh every man's cottage a castle of defence; nay she herself is a castle and a fortress for the weak to retire unto; she is a sanctuary for the oppressed to fly unto; and having the virtue of Orpheus' harp, she charmeth the fierceness of the lion and the tiger, so as the poor lamb may be in safety by

* Ovid, Fast. lib 1. l 70. G.

them. But on the other side, *Quid sunt Regna nisi latrocinia sine Justitia* (saith St. Augustine), without Justice the land would be full of thieves, the sea full of pirates; the Commons would rise against the Nobility; the Nobility against the Commons; we should not know which were our own, what were another man's; what we should have from our ancestors, what we should leave to our children. In a word, there would be nothing certain, nothing sure, no contracting, no commercing, no conversing amongst men, but all kingdoms and estates would be brought to confusion and all human society would be dissolved.

So then, without any further amplification of this point, by these few demonstrations, you may perceive, what an excellent business, what a well-deserving service we have in hand, being assembled at this time and place to maintain the public peace and to execute the public Justice.

THAT THE JURORS IN THE GRAND INQUEST DO
BEAR A PRINCIPAL PART IN THIS SERVICE.

Now in this business, in this service, you my Masters, have a principal part as I have said before; for though his Majesty's Commission be directed only to us, whereby we are authorised to inquire by the oaths of good and lawful men, and to proceed *secundum leges et consuetudinem Regni*; yet now by this ordinary course of the Law of the Land, we that are Justices cannot proceed against offenders without the service and ministry of you that are jurors; without your inquisition and presentment no malefactor can be brought to his answer. And herein the public justice of England doth observe the like course as the divine

justice did in proceeding against those sinful cities in the 19th of Genesis; for though their sins were crying sins and most notorious to the world and most perfectly known to God Himself (for *omnia nuda et aperta sunt oculis eis*) yet was the divine Majesty pleased to make an enquiry thereof, before He would give judgment against them: *Descendam et videbo utrum clamorem qui venit ad Me opere compleverint, ut sciam ita sit vel non*: Not that God was ignorant of their most secret offences, but for that it was His divine pleasure to give an example or precedent to the judges of the Earth, how they should proceed in causes brought before them; not grounding their judgments upon their own private knowledge but upon solemn and public inquisition and trial.

And therefore the Law of England doth put into your hands who are the Grand Inquest and the Public Inquisitors for this County, the very key of Justice concerning causes; for by your *Billa vera*, or by your *Ignoramus*, you do open and shut all the proceedings in all the pleas of the Crown, whereby it appears that the trust which the Laws and the Commonwealth reposeth in you is exceeding great.

And for this cause are there half-yearly Circuits, whereby the streams of Justice are derived into all parts of this kingdom; which like the streams of Paradise, do make this Land such a Garden of Pleasure, as now it is (God be thanked for it). In the Visitations of Justice, the course hath ever been to begin the service with a Charge to the Jurors of the Grand Inquest of every County; putting them in mind of all the offences against the Law whereof they are to inquire, to the end

that they who live in the country and have an interest in the country, and are sensible of the mischiefs which these offences do breed, may present the offenders to the Justices; who thereupon are to proceed according to the tenor of their commission.

I shall therefore without any further preamble, descend to the Articles of the Charge, which I shall deliver as briefly as the variety of the matter will permit, and in the clearest order and method I can, as well for the help of mine own memory, as of yours.

THE DIVISION OF OFFENCES AGAINST THE LAW.

First then the offences against the Law whereof
 1. Capital we have power to inquire by our com-
 offences. mission, are of two kinds: first capital
 offences, for which the offender shall loose his life
 or suffer *ultimum suppli.*

Secondly, finable offences or contempts, for
 2. Finable which the offender shall not die but shall
 offences. be punished in his body, goods or lands,
 more or less, according to the quality of the
 contempt.

Again, Capital Offences are of two sorts or kinds,
 namely by treasons or felonies; and treason like-
 wise is two-fold: high treason and petty treason;
 and high treasons are of two sorts: treasons at
 Common Law, or treasons by Act of Parliament.

All such Acts as are high treason by the ancient
 Common Law of England, were declared and par-
 ticularly expressed in Parliament in the five and
 twentieth year of K. E. 3. And this declaration
 was then made at the special petition of the Lords
 and Commons, that they might know what was

High Treason, and in what cases they should incur the danger of High Treason; for that in the time of the Barons Wars, when every man was subject to danger and suspicion, and during the minority of King Edward the 3rd, many men were accused and condemned of high treason, when (as it was conceived) their offences were not of so high and heinous a nature as high treason, by the ancient Law of this Land.

Therefore in the Statute of 25. Ed. 3. such acts as the Law did then adjudge High Treason, are declared and expressed, and do consist in these few points ensuing:

1. To compass or imagine the death of the King or of the Queen or of the Prince their eldest son and heir.

2. To violate the King's wife, or the King's eldest daughter unmarried, or the wife of the Prince, the King's eldest son and heir.

3. To levy war against the King, or to adhere to the King's enemies, within the realm or without.

4. To counterfeit the King's great Seal, or Privy Seal, or his money current within the realm.

5. To kill the King's Chancellor or Treasurer, or any of the Justices of the one Bench or of the other, or of the Justices of Assize, Oyer and Terminer, sitting in their place and doing their offices.

All these acts are high treasons against the King's person and his Majesty Royal, by the judgment of the ancient Common Law of England.

Besides these two treasons at Common Law, divers other acts tending to the diminution of the crown, and ruin of the Commonwealth, and which were unknown and unheard of in the time of

Edward the 3rd, have been made and adjudged treasons by sundry acts of Parliament of late times.

And these were Treasons which were unknown unto our ancestors for the space of four hundred years after the Roman Conquest; [and which] have been invented and practised since the great change made in the State Ecclesiastical by King Henry the 8th, for the Pope's usurped primacy being abolished, and the King's supremacy in causes ecclesiastical established by act of Parliament in the 28th year of King Henry 8; which was a year of Jubilee to the subjects of England, for that they were manumitted and set free from the base slavery of the Court of Rome, whereunto they had been subject for divers ages before, yet some there were that would not be free but desired to continue slaves to the Pope still, and therefore deserved to have their ears bored and nailed to the gates of Rome, as a mark of perpetual servitude. But because it yet lieth in the power of subjects to renounce their allegiance, the wisdom of the Parliament did then set down an oath, to be administered to all the subjects of England, whereby they should acknowledge the King's supremacy in all Causes and over all persons within his dominion, and made it high treason to refuse that oath; and so the refusal of this oath of supremacy, was the first treason by act of Parliament added to the treason at Common Law before expressed.

This act continued in force till the first year of Queen Mary, who receiving the yoke of Rome again, did by an act of repeal, abolish the oath of supremacy, and declared such acts to be high treason as were holden to be high treason in the

25th year of King Edward the 3d.

But when Queen Elizabeth came to the crown, though she revived the sovereign power again, restored the ancient jurisdiction of the crown, and revived the oath of supremacy, yet did she not make it high treason: first, to refuse that oath. But by the statute of 1st Elizabeth, the first refusal of the oath of supremacy, was made but a contempt, and punished with imprisonment: The second refusal was made *præmunire*, and the third refusal was made high treason. With this moderation Queen Elizabeth began her reign.

Afterwards by a statute made 5th Elizabeth, the first refusal of that oath was punished with the pain of *præmunire*, and the second refusal, was made high treason; and thus it rested till the 13th year of her reign, without addition of any other treason to the treasons at Common Law. But then indeed, the disloyalty of some of her own subjects, and the malice of the Bishop of Rome by setting abroad new treasons, never heard of before, did enforce her to make laws to meet with those traiterous conspiracies against her person and crown; for the Pope by the solicitation of some of her own disloyal subjects, had sent over a Bull of excommunication against the Queen herself, and therein declared her to be no lawful Queen but deposed and deprived of her crown and kingdom; withall he sent over other Bulls by the hands of English priests and Jesuits, authorising them to absolve and discharge all the Queen's subjects from their allegiance and obedience unto her and to reconcile them to the See of Rome.

Whereupon followed a dangerous Rebellion raised by two great Earls in those northern parts,

whereof I doubt not but some of you that are present retain a fresh memory ; and divers other perilous practices were discovered in other parts of this kingdom, which did forcibly move the Parliament, 13^o Elizabeth, to make it high treason to bring in and to publish any such Bulls of absolving or reconciling the Queen's subjects, as also to be absolved or reconciled by virtue of these Bulls. Here was another cause of high treason added to the treasons at the Common Law. But this Law of 13^o Elizabeth, did only restrain the bringing in of Bulls, but not the coming in of priests and Jesuits ; and therefore about the 20th of Queen Elizabeth, Campion with other Jesuits and Seminary priests, came boldly into England, to strengthen the Catholic party (as themselves professed) and here they practised by preaching, private persuasions and spreading of books and pamphlets, to withdraw the subjects from their obedience, and reconcile them to the See of Rome. Therefore in 23d of Queen Elizabeth, another act was made, whereby it was made high treason to endeavour by any other means besides Bills or instruments sent from Rome, so to withdraw or reconcile the subjects. And it was likewise made treason in every subject that should be so withdrawn or reconciled.

After this again, because this work of stealing of the hearts of the subjects from their sovereign, was *opus tenebrarum*, and wrought by secret means impossible to be proved ; for that it was done by Jesuits and Seminary priests, who distilled their poison into the ears of the people in corners, as the envious man sowed his tares in the night. Therefore in the 28th year of Queen Elizabeth,

all Seminary priests and other priests ordained by foreign authority, were banished out of the Realm by Act of Parliament; and by the same act it was made high treason for any such priests or Jesuits being born in England, to come into England, or to remain in England after 40 days next ensuing that session of Parliament. The makers of that Law knew their errand to be treason; and therefore they have set a mark or character of treason upon their very persons, though no other act of treason be proved against them. An English Jesuit doth no sooner set his foot upon the English shore, but the Law adjudgeth him a traitor, *ipso facto*, justly and worthily I doubt not, in the judgment of every one that bears a loyal English heart, and is a lover of his country, as every honest man ought to be.

For the Schools and Seminaries beyond the seas, where the English priests are nourished and brought up, are nothing else but the seed-plots and nurseries of treasons against the crown of England. Those Colleges were founded and erected to no other ends but to undermine and ruin the State of England; those Schools with every lecture that is read unto them in philosophy or divinity, do learn a lesson of treason against their own country; they are taught from their childhood to hate their native country, to abhor the religion, to scorn the civil government, to repine at the peace, plenty and prosperity of their country: so as the instinct of Nature which moveth every honest man to love his country, and which the heathen did prefer above all other respects, *omnes omnium charitates Patria una complectitur, pro quo quis bonus dubitet mortem oppetere* (saith Cicero):

this natural instinct doth seem to be quite extinguished in these priests and Jesuits; inso-much as they do not seek the disturbance of the public peace, but the utter overthrow and demolition of ther country, be it by intestine rebellion or by foreign invasion, they care not how, they care not by whom; so as they have made themselves slaves and villains to the enemies of their country. So do they desire out of a devilish malice and envy, to bring both our princes and people into the like slavery and servitude. Is it not then a just and honourable law which doth banish these Jesuits out of England, which doth make it high treason for these unnatural vipers to live in the bowels of this country? And of like nature and quality, this order of Jesuits is found to be in all other countries in Christendom; for who are they that teach the doctrine of deposing and murdering of Kings, but the Jesuits? of massacring and butchering Christian people, but the Jesuits? of firing of estates under pretence of zeal and devotion, but the Jesuits? Did not they procure two French Kings to be murdered one after another? Did not they plot and prosecute the Gunpowder Treason in England? Are they not busy at this day to make a combustion in all Europe? Therefore I hope God will one day put it into the hearts of all Christian princes to agree together, to root them all out in one day, as they did the Templars, who were a less hurtful order than they are. In the meantime my Masters, let us endeavour to root them out of this country, as being the most pernicious enemies that ever the crown of England had, as being indeed the common enemies of all Christendom. And thus you see what are high

treasons by the ancient Common Laws of this land, and what other acts have been made high treasons by sundry laws in Parliament, and the just cause and occasion of making of those laws.

PETTY TREASON.

Petty Treason is of an inferior degree, and it is committed against a subject between whom and the offender the Law presumeth that there is a special trust (for there is no treason but in trust) to whom the offender doth owe a special obedience and subjection. Therefore if the wife do murder the husband, or the servant the master, or an inferior clerk his bishop or diocesan, this is petty treason by the Common Law. Thus much of Treasons, being the first kind of capital offences.

FELONIES.

The second kind of capital offences are felonies, which are of two sorts, public and private.

1. Public felonies are such as are hurtful to the Commonwealth, or a multitude of subjects.

2. Private felonies, are of three kinds, and do tend either to the disturbance of the public peace, or to the hindrance of the public profit, or to the destruction of a multitude of subjects in their persons.

1. For the first kind of public felonies, To relieve or receive a Jesuit or Seminary priest, which comes to trouble the peace of the Realm in a most dangerous manner, if the Reliever or Receiver know him to be a Jesuit or a Seminary priest, it is felony, by the statute of the 28. of Eliza. ca. 12.

2. If any obstinate Sectary in points of Religion or ecclesiastical government, refuse to abjure the Realm, or after abjuration, do remain or return into the Realm without submitting himself to Conformity, he is a felon by the statute of 35^o Eliza.

3. If any man go beyond the seas to serve any foreign Prince, without taking the oath of allegiance before his departure; or if any man that hath served as an officer in the Wars, do go to serve any foreign Prince and he be bound with sureties not to be reconciled to the See of Rome, nor to consent to any conspiracy against the King, this is felony by the statute of 3 Jac. ca. 4.

4. If a multitude of subjects be assembled together in a rebellious manner, and do refuse to disperse themselves after proclamation made by a Justice of the Peace, commanding them to disperse and depart in a peaceable manner, they are all felons by the statute of 1^od Mary ca. 12.

5. Counterfeit rogues calling themselves Egyptians, if they be found wandering in any part of the Realm, are felons by the statute 3 Eliza. ca. 5.

6. Incurrigible rogues, branded with an iron, if they be found wandering; and such as wander under the name of soldiers and mariners with counterfeit passports, are felons by the statutes of 34. Eliza. and 1^od Jac.

1. If any soldier, mariner, or gunner, having received the king's prest wages, depart from his captain, it is felony by the statute of 18 H. 6. ca. 19.

And these I call public felonies, tending to the disturbance of the public peace.

For the second kind of public felonies, multiplication of gold and silver, which tends to

the prejudice of the King and his people in points of profit, is felony by the statute of 5 H. 4. ca. 4.

Transporting of sheep beyond the seas for their wool, as the principal commodity of this kingdom, is likewise felony by the statute of 8. Eliza. ca. 3.

Purveyors likewise, if they take subjects goods without warrant, or without just appraisement and giving ready money or tallies for the goods taken, do become felons by the statute of 5 E. 3. and divers other statutes.

Embezzling and razing of Records, which may greatly prejudice the subjects in their estates, is felony, by the statute of 8 H. 6. ca. 4 and 12. And these are public felonies against the profit of the King's people.

Lastly, touching the third kind of public felonies, If any person infected with the Plague, and having the sore upon him uncured, do wilfully walk abroad and converse in company, this is felony by the statute of j^o Jac. ca. 31. and because it may tend to the destruction of a multitude of the King's people, I number it amongst the public felonies.

Private felonies, which are hurtful to particular persons, are of three kinds, and do consist either in taking away the life of a subject or in violating the person of a subject, without taking away of his life; or in taking away the goods of a subject.

The offence of taking away the life of a subject is divers, according to the diversities of circumstances: If it be done upon premeditated malice it is Murder, under which poisoning and stabbing and witchcraft are comprehended: If upon a sudden falling out, it is Manslaughter. And these are

felonies punished by death. But if it be done in a man's own defence, or by misfortune, or chance-medley, the offender though he forfeit his goods, hath his pardon of course. So if a man do kill himself, he is *felo de se* and his goods are forfeited, though his lands descend to his heir, because he is not attainted.

Yet in some cases killing of a man is no offence, but may be justified as a lawful act.

If a Sheriff or other officer, that hath a lawful warrant, do execute a person attainted of Treason or felony; or endeavouring to arrest a traitor or felon, who doth resist the arrest, do kill the traitor or felon so resisting, this being done for the advancement of justice, is justifiable as lawfully done.

If one do enter or attempt to break another man's house, with an intent to rob or kill the owner of the house, if the malefactor be slain in his attempt, it is no offence but it is justifiable by the Law; for a man's house is his castle for the safety of his person and goods; wherein if he be assailed, the Law doth allow him to make his defence by all means possible.

So if a man be assaulted on the King's highway (which by the ancient Law of this Land had the privilege of a sanctuary) if the assault be made with a purpose to rob or kill, the party that is assaulted may justify the killing of him.

So if Hunters come into a forest or park, and there do hunt without warrant, if the keeper endeavouring to arrest them, be resisted by them, and upon that resistance any of the hunters be killed, the killing is no felony, but justifiable by the statute of 21 E. 3.

The felonies which consist in the violating the person of a subject, without taking away life, are not by the Common Law but by sundry acts of Parliament; as rape is made felony by the statute of Westminster 2. ca. 34.

Putting out of eyes and cutting out of tongues upon malice premeditated, is made by the statute of 5 H. 4. ca. 5. felony.

Taking money of women having lands or goods, against their will, is made felony by the statute 3 H. 7. ca. 2.

Marrying of a second wife or husband, by one that had a former wife or husband living, is felony, by the statute of 1 Jac. ca. 11.

The carnal knowledge of a woman child, being under the age of ten years, is felony by the statute of 18 Eliza. ca. 7.

Felonies which are hurtful to particular persons in their goods or possessions, are of divers natures and names, according to the diversity of circumstances; as the breaking and entering into a house by night, with an intent to rob, or to commit any other felony, is called Burglary; and it is felony though nothing be taken away.

The malicious burning of dwelling-houses or barns replenished with corn, is felony by the Common Law.

The assaulting of a man upon the highway, and the taking of money, or anything else from his person, is called robbery; and is felony, though that which is taken be under the value of 12d.

If a servant of 18 years of age, not being an apprentice, do embezzle or go away with his Master's goods delivered him to keep, to the value

of 40s., it is felony by the statute of 21 H. 8 and 5 Eliza. ca. 10.

Unlawful hunting in any forest, park or warren, by night, and the denial or concealment thereof upon examination before any Justice of the Peace, is made felony [by] 1 H. 7 ca. 7.

The taking up and stealing away of a falcon, tercelet or Lamon, without carrying the same to the Sheriff of the county to be proclaimed, is felony by the statute of 34 E. 3. ca. 22.

Lastly, the secret taking away of other men's goods with an intent to steal the same, is Theft; and if the goods taken away amount to the value of 12d. it is felony, and punished with death: but if the goods taken away be under the value of 12d. it is called petty larceny; for which the offender shall not die; but is to suffer some corporal punishment, according to the discretion of the Judge before whom he is convicted.

Thus much concerning Treasons and Felonies of all sorts. Now, touching the offenders as well in case of Treasons as in case of Felonies, there is this difference; in case of Treason, such as advise or procure treason to be committed, though they be not present at the acting thereof, be principal traitors and not accessories; and so are such as receive or relieve the traitor, knowing him to be a traitor, after the treason committed.

But in case of felony, there may be accessories; for such as procure a felony to be committed, are accessories before the felony; and such as receive a felon, knowing him to be a felon, are accessories after the felony; and shall suffer the like punishment as the principal.

But as the rescue of a traitor from arrest, and

the wilful escape of a traitor is treason, so the rescue and escape of a felon is felony; and if any man committed for treason or felony do break prison, whether he be guilty or no, it is treason-felony in him that breaketh the prison.

Thus have I made a brief reflection of sundry capital offences for which the offender is to suffer death by the Law. And now I come to the second ^{offences} main branch of offences, namely, ^{fineable.} Offences fineable, or contempt against the Law; for which the offenders are not to suffer death, but are to be punished for the most part with fine and imprisonment; and these offences are of three kinds.

1. *Either against the temporal laws, made for the maintenance of the honour and service of God.*
2. *Or against the crown and dignities royal, immediately and specially.*
3. *Or against the Commonwealth in general.*

The principal offenders against the temporal laws, which have been made in the realm for the maintainance of God's service and honour, are recusants; such I mean as refuse to come to Church to hear divine service and to receive the sacraments according to the form of religion established in this kingdom. And though this do seem to be an ecclesiastical cause, yet because the censures of the Church were found too weak to draw the people to conformity, our Parliament sundry times have added *Bracium sæculare*, to drive the multitude to Church, agreeable to that we find in the parable of the Gospel. When those that were not invited would not come to the Feast, saith the Master of the Feast to his servant, *Exi in vias et sepes et*

compelle eos intrare ut impleatur Domus mea; and therefore the statute 1^o Eliza. doth command all the subjects of this Realm, to repair every Sunday and holiday to their Parish Churches, or accustomed chapels, to hear divine service, upon pain of 12d. to be paid for every default, unless they have some reasonable impediment or excuse. This same small penalty of 12d. may seem rather an admonishment than a punishment, yet the wisdom of that Parliament found it to be sufficient to bring the country people or ignorant multitude (such as in the parable are said to live by the hedges or highways) to fill all the Parish Churches of England. The like pain of 12d. for every Sunday and holiday, was imposed by the Council of Tolouse about 400 years since, upon all such as should wilfully absent themselves from Church. This was intended by the Pope especially against the Albigenses. So this mulct of 12d. for not coming to Church was first invented by the Papists and not by us; and therefore our recusants have less cause to complain of the making of this law. But this small fine is either for negligence, or for simple recusancy only; howbeit there were heavier penalties in the said statute inflicted against such as commit higher contempts against the service and honour of God. And therefore if any parson, vicar, or other minister shall refuse to say the public prayers or Liturgy, or to minister the sacraments according to the Book of Common Prayers, or shall preach or speak or write in degradation of that Book, he shall forfeit the profits of his living for a year, and suffer imprisonment for six months. And if he be convicted a second time in this kind, he shall be utterly deprived of all his benefices.

Again, if any man do say divine service, or procure divine service to be said in any other manner, than is prescribed in the Book of Common Prayer, he shall forfeit for his first offence 100 marks, for his second 400 marks, and for his third, in the same kind, all his goods and chattels.

This statute of 1^o Eliza. was the only law that was made against recusants until the 23 Eliza. And so recusancy was punished only with 12d. during the first 23 years of Queen Elizabeth's reign. But then indeed, because the people fell away from the Church in great numbers, being seduced by Jesuits and seminary priests, which swarmed within the realm, until the penal laws mentioned before, did declare them to be traitors, and banished them out of the kingdom by the statute of 23 Eliza. a penalty of 20s. for every month is enforced upon any convicted recusant; and if he shall continue obstinate for the space of 12 months after his conviction, he is to be bound to the good behaviour. And if any man keep a recusant schoolmaster in his house, he is to forfeit 10s. for every month, as long as he shall retain such a schoolmaster. And if such convicted recusant shall not be able to pay such heavy penalties, they are to suffer imprisonment till they pay or conform themselves.

After this, by the statute of 25 Eliza. ca. .1 convicted recusants are confined within 5 miles of their dwellings; and if they will not reside within that limit, they are to abjure the realm, or to be adjudged felons. And if any man shall keep a recusant in his house, servant or sojourner, he is to forfeit 10s. for every such recusant. Lastly, by the statute 3 Jaco. cap. 4. If any Popish

recusant which doth conform himself, do not within a year after his conformity, receive the communion, he doth forfeit for the first year 20s.; for the next year 40s; for the third year 60s; and after for every year 60s. until he do receive the communion.

Moreover, for the honour which men ought to bear to the places of religious exercises, by the ancient statute of Winton 13 E. 1. If any man do keep any fair or market in the church-yard, he is to be punished with fine and imprisonment; and if any man do fight or strike another in the Church or Church-yard, he is to be punished with loss of one of his ears, by the statute 1 E. 6. ca. 4.

The Contempts immediate against the crown, are of a higher nature; and are known by the names of misprision and præmunire

Misprision is either of treason or felony; and doth consist in concealment of treason or felony. When a man doth know that another hath committed treason or felony, and doth not reveal it to the King or his council, or to some magistrate, that the offender may be brought to justice, this concealment is not felony or treason, as it is declared by sundry acts of Parliament, Vigt 1 E. 6: 5 E. 6: et 1. et 2. Phil. et Mary ca. 10. But it is misprision of felony or treason; for which the offender shall forfeit his goods and his profits of lands, and suffer imprisonment during his life.

This concealment of treason is misprision of treason by the Common Law; but there are some other acts which are declared to be misprision of high treason by the statute of 14 Eliz. ca. 3.

If any Bull of reconciliation to the See of Rome have been offered to any subject, if the subject to

whom it hath been offered do not reveal this offer made unto him, within six weeks after the offer made, either to some of the King's privy council, or to one of the presidents in the North, or Wales respectively, that is misprision of high treason by the statute of 13 Eliza. ca. 2. et 23. Eliza. ca. 1.

Præmunire is properly and originally a writ or process of summons, awarded against such as did bring in bulls or citations from the Court of Rome, either to obtain ecclesiastical benefices by way of provision before the same fell or became void, or to draw the king's subjects by way of appeal from the justice of this realm, to answer suits in the Court of Rome.

These acts were adjudged high contempts against the crown in sundry parliaments in the time of King E. 1. 2: 3 and Rich. 2. and a grievous penalty inflicted against the offender in that kind, namely that they should forfeit all their lands and goods, and be put out of the King's protection; so as every man might do with them as with the enemies of the king and his realm.

This was the proper case wherein the process of premunire (which in good Latin would be *premoneri*) was awarded in ancient time; but of later years, the same heavy penalty hath been imposed by sundry acts of Parliament in other cases of contempt against the crown, namely in these cases following:

"If any man do wilfully or advisedly extol the authority or jurisdiction of any foreign prelate or prince, within this realm, he is in case of *premunire*, by the statute of 5. Eliza. ca. 1.

"If any man do wilfully and advisedly refuse

the oath of supremacy, he is in the same case by the same statute 5. Eliza. 1.

“ If any man being above the age of 18 years, shall refuse to take the oath of allegiance, he incurreth the same danger of premunire by the statute 3 Jaco. ca. 4.

And if any man do bring from Rome any Agnus Dei, hallowed beads, or such superstitious trifles, and deliver the same to any of the king's subjects; and if any subject do receive the same and do not apprehend the bringer thereof, and within three days disclose the same to the bishop of the diocese or to some justice of the Peace, he likewise is in case of premunire, by the statute of 13 Eliz. ca. 2: and 23 Eliza. ca. 1.

Lastly, whereas it was conceived that a man attainted upon a premunire, might be killed or slain by any man whatsoever, because by the Law he is out of the king's protection, it was propounded by the statute... Eliza. ca. 1. that it shall not be lawful to kill or slay any person which is attainted upon a premunire, under pretence or by reason of any such attainder, or by any law, statute, or opinion to the contrary notwithstanding.

Offences finable against the Commonwealth. Contempts or Offences finable against the Commonwealth, are of four kinds, being either

1. Against the public Justice, or 2. Against the public Peace, or 3. Against the public good of the king's people, or 4. Against the public health, general easements or convenient recreation and pleasure of the king's subjects.

Of these offences I shall rather briefly run over the names than express the nature thereof at large;

for in so doing, I shall detain you over long ; and whereas I would be a Remembrancer unto you, I shall but surcharge and confound your memory.

The offences against the public Justice do tend to the perverting or abuse of Justice, or to the dishonour or scandal of Justice.

THE SEVERAL KINDS ARE THESE :

Perjury and subornation of perjury, unlawful maintenance of causes ; which is a special cause of maintenance, to gain part of that which shall be recovered, and *champertie* entertaining or taking of retainers, and giving liveries to other than to a man's household-servants and officers, whereby great men do enable themselves to sway and bear out business in the country, bribery of jurors of the Grand Inquest, to make favourable presentments.

If a man be a common *barrator* or stirrer of suits and quarrels amongst the king's people, which otherwise would be in good peace ; or if a common Informer upon penal statutes, do compound with the parties against whom he doth inform, without leave of the Court in which the information was preferred : these offences do apparently pervert or abuse or dishonour the public Justice.

So it is if the Sheriff (who is both a Judge and Minister of Justice) do let to farm his County Court ; if he enter complaints in the same Court, without the privity of them who are supposed to be parties ; if he set fines in his own Court and levy the same without process obtained from the Justices of Peace ; if he refuse to bail prisoners who are bailable by the law : In all these cases the Sheriff is an offender against the public Justice.

So are under-sheriffs and bailiffs if they take upon them to execute their offices before they have taken an oath to execute them duly. So is the Escheator of the County: if he take upon him the place, not having freehold lands worth 20s. p annum, within the county. And lastly, so is the Coroner; if he refuse to do his office without fee, when a man is slain by misadventure.

The offences against the public Peace, do consist either in violence or negligence: violence committed by such as break the peace: and negligence by such as should preserve the peace.

Of the first kind are riots, routs, unlawful assemblies, forcible entries and forcible detainers of lands and tenants; maims, batteries, and all manner of trespasses: to ride or go armed, to the terror of the king's people, contrary to the statute of North'ton [=Northampton] to lie in wait to maim or kill, or the like.

Of the second kind is the negligence of constables following the Hue and Cry: the negligence of Townships in keeping of watches upon the highway from sunsetting to sunrising, between Ascension day and Michaelmas; the negligence of maritime towns and villages in keeping watches upon the sea-coasts; the negligence of the lords of the soil in clearing high-ways of rubs and bushes, that travellers may pass in safety; the negligence of the Justices of the Peace and constables in preserving their offices respectively, touching such laws as are made against rogues and vagabonds, and against the misrule and disorder of alehouses; which two mischiefs do not a little endanger the inward peace of the whole kingdom. The negligence of constables in supressing rogues and

vagabonds, doth consist in three points, namely: If they do not arrest and whip all vagabonds and rogues, and bring them before Justices of peace to be put to the house of Correction. And if the same rogues, being delivered out of the house of Correction, do wander again and continue their roguish life: in such case they are reputed incorrigible rogues. If the constable do not again arrest them and bring them before the Justices of the Peace, to be branded with a hot iron in the shoulder, with the letter R: whereupon they are to abjure the realm; and if afterwards they be found in the realm, they are to be taken as felons, and to suffer death by the several statutes of 39 Eliz. et. 1st Jac.

The negligence of Justices of Peace in the suppressing rogues, doth consist in this, namely: If according to the same statutes of 39. Eliza. and 1st Jac. they do not meet twice a year about that service; and before their meeting send warrants to the constables to make search for rogues and vagabonds, and to bring them before the Justices at their meetings: If they do not cause houses of Correction to be erected in every Shire with governors of those houses, and fit implements and stocks for setting the rogues and vagabonds to work; whereby these weeds may be made profitable herbs, and the Commonwealth may gather grapes of thistles: forthat some commodity will arise out of their handy-works. Again, if the Justices of the Peace do neglect their duties in correcting the misrule and disorder of alehouses: which are the dens of those noisome beasts, the rogues, and the rendezvous of all unruly people: if they suffer too many people to keep alehouses in each county,

and if they omit to take recognizances of the alehouse-keepers for keeping good rule and order.

And the Constables for their parts omit their duties, if they do not levy by distress, and distribute to the poor, all such penalties as are imposed upon alehouse-keepers and alehouse haunTERS, by the statute of 1^o Jac. ca. 9. et. 4. Jac. ca. 4. namely 20s. upon every alehouse-keeper, Innkeeper, or Victualler, that doth not sell a quart of the best beer and ale for a penny, and 3d. and 4d. for every person that dwelling in any town or village, shall ever be drunk, or drinking or tipping in any alehouse or inn (their labourers and workmen sojourning in the said town or village excepted). And these are offences against the public peace, consisting in either violence or negligence.

The offences against the profits of the King's people, are either extortions, which do imply a kind of force, and fraud and deceits.

Extortions are committed by officers when they wrest and extort from the people more than is due unto them, by colour of their offices: As, if Ordinaries or their officials exact more for probate of testaments, or granting of letters of administration, than is limited by the statute of 21 H. 8. ca. 5: If Sheriffs or under-sheriffs take greater fees than are contained in the statute of 23. H. 6. ca. 10.

If Escheators, Coroners, Clerk of the Market, Clerk of the Peace, Clerk of Justices of the Peace, Bailiffs of Liberties, Bailiff's servant, Gaoler or any other officers or ministers of Justice, do by colour of their several offices, exact or extort more or greater fees than are due by the Law to them,

whereby they impoverish the king's people and enrich themselves: These are offenders against the public profit; and because that purveyors for the King's House and Navy, are officers in that kind, the abuses committed by them in making provision either of victuals or of timber, contrary to the statutes of 20. H. 6. ca. 8: 25 E. ca. 1. et 10 Jacobica. 22. are of the nature of extortion, being done by colour of their office, and may be numbered amongst the offences against the public profit. And so may excessive usury, which grindeth the face of the poor, and is a great extortion. Frauds and deceits, whereby the king's people are impoverished are used for the most part, in the making, buying and selling of commodities necessary for the life of man; and these frauds are either general or particular.

General frauds, have relation to all manner of commodities, and the offenders are such as buy and sell by false weights, not agreeable to the king's standard, nor marked nor signed according to the statute of 11 H. 7. ca. 4.

Forestallers, who do buy up commodities upon the way before the same come to the Market.

Regrators, which buy corn or other victuals in the market, and sell the same again in the same market, or any other within four miles thereof.

Ingrossers, which do buy great quantities of corn or other victuals, and sell the same again: such as exercise mechanical trades, wherein they have not been brought up as apprentice seven years, according to the statute of 5^{to} Eliza: such as keep dicing houses or other places of unlawful games, forbidden by the statute of 33 H. 8. ca. 9: such as do deceitfully get into their hands other men's

goods, by false tokens or counterfeit letters, which is made very penal by the statute of 33 H. 8. ca. 1 : such as should keep Toll-books in markets and fairs, and do neglect to do it : all these are offenders in general against the public profit.

Particular frauds are divers, according to the diversity of things that are useful and necessary for man's life, namely meat, drink, and apparel, furniture of households, labourers, servants and apprentices: touching these things the several offences do consist in these points.

1. Touching meat and drink, if the assize of bread, beer and ale, be not kept by Bakers and Brewers; if the price of wines limited by the statute of 27 Eliz. be not observed; if that Victuallers and Artificers do conspire to sell at certain rates and prices, contrary to the statute of 2. Eliza. ca. 15.

And whereas divers good laws have been made for the increase of the breed both of cattle and fish to prevent dearth and scarcity of victuals within the realm, if any do break or defraud these laws they are offenders against the public profit.

Therefore such as do utter flesh in Lent, or upon fish-days, contrary to the statute of 5^{to} Eliza. and 1^o Jac.; such as kill weanlings under two years old, and calves under five weeks old; which is prohibited by the statutes of 24 H. 8. ca. 9. et 1^o Jac. ca. 21 : such as buy beeves and muttons and sell them again before they have kept them five weeks; against the statute of 5^{to} Eliza. 6. ca. 14: such as do not keep milch kine, and rear calves; according to the statute of 13 Eliza. ca. 25; such as do transport out of the realm, corn, beeve, butter, and sea-fish, cheese, or herrings, unless

corn and malt be at such low prices as are expressed in the statute of 1^o Jac. ca. 25 et 2 Jac. ca. 11: such as do take any salmons between the first of the nativity of our Lady and Christmas, or do kill any young salmons between April and Midsummer, or do any way destroy the fry of fish contrary to the statute of Westminster 21 Eliza. ca. 17 et 3 Jac. ca. 12: such as buy herrings, cod, or ling, brought in by Strangers; which is forbidden by the statute of 5 et 13. Eliza: such as set any fine, toll, or tax upon sea-fish, or have toll upon any sea-fish, by colour of any commission for purveyance, contrary to the statute of 27 Eliza. ca. 11. All these are offenders against the public profit of the King's people in this point of necessary provision of victuals.

Touching apparel, the frauds that are used in making and dyeing of cloth, contrary to the statute of 3 Eliza. 6. ca. 2. et 1 Eliza. ca. 12: in making of felts, against the statute of 1^o Jac. ca. 17: in making of fustian, against the statute 11 H. 7. ca. 7: in tanning, dressing and searching of leather, against the statute of 1^o Jac. ca. 22. and in making of shoes and boots, against the same statute: These are offences against the public profit in that kind.

Touching furniture of household and other necessities, the deceits and frauds of goldsmiths, against the statute of 2 H. 6. Of pewterers and braziers, against the statute 19 H. 7. ca. 61. Of upholsterers, against the statute 11 H. 7: ca. 19. et 5. Eliza. 6. ca. 23. Of tilemakers, against the statute of 17 Eliza. ca. 4. Of wax-chandlers, against the statute 11 H. 6. ca. 12. Of colliers and woodrangers, against the statute of

These are offences against the public profit in that kind. Lastly, touching labourers, servants and apprentices, forasmuch as the fruits of the earth cannot be imported and gathered but by labourers, neither can gentlemen, merchants, or tradesmen live conveniently without servants, nor Arts and Sciences be continued without apprentices; therefore if any unmarried persons having no other competent means to live, do refuse to be retained in husbandry or some other trade, wherein he hath been brought up; if the Justices of the Peace do not meet once a year and rate or tax the wages of servants; if any servant do exact greater wages, or any master give greater wages than his rate, set down by the Justices; if any servant depart from his master before his time of retainer expired, or without license or lawful warning; if any retained servant shall make an assault upon his master or mistress, or any man do take an apprentice in any other manner than is by the statute of 5 Eliza. ca. 4: All these are likewise offenders against the profit of the king's people.

The offences against the general easements and fit pleasures or recreations of the King's subjects, do consist in these several points; first if butchers do utter corrupt flesh or Victuallers do sell unwholesome victuals, contrary to the statute of 51 H. 3. If malsterers do make unwholesome malt, contrary to the statute of 27 Eliza: if public nuisances of smoke, carrion, or the like, which may infect the air, be not removed; if cottages and inmates which are noisome and pestring both in city and country, be permitted, contrary to the statute of 31 Eliza. ca. 7. and 35 Eliza. ca. 6: if the multitude of poor people (which are a great

nuisance to the Commonwealth) be not provided for according to the statutes of 43. Eliza. ca. 2. et. 44 Eliza. ca. 5.: by which laws provision is made as well to relieve the impotent poor that are not able to work, as to set on work the poor that are able to work, that they may in some measure relieve themselves. These neglects are often against the health of the King's people. If these Laws concerning the poor, were duly put in execution, there would be no beggars in Israel; and for the execution of these laws, the makers thereof did principally trust the Justices of Peace of every county, who every year, within a month of Easter, are to appoint overseers of the poor in every parish. These overseers are to tax the inhabitants of every their several parishes, with competent sums of money for the daily relief of the old, blind and lame, who are not able to work, and for buying of a competent and convenient stock of flax, hemp, wool, thread, iron and other necessary ware and stuff; to set on work such as are able, or to bring poor children to be apprenticed in some honest trade; for this service the overseers are to meet once every month, and are to give an account of their doings to the Justices of Peace; so as if the Justices of Peace do neglect to appoint these overseers or to give warrant to them for levying their taxations, or to take an account of them as they are enjoined by the statute of 24 Eliza: this negligence of theirs is a great offence, in that that they do not their duties in removing so great a nuisance as a multitude of poor people is to the Commonwealth.

Secondly, high-ways and bridges in the high-ways, are public easements for the King's people in

their passages to and fro about their affairs, and therefore sundry laws have been made for the repairing and upholding of highways and bridges: only 2 et 3 Phil. et Ma: and 5 Eliza. ca. 13. do provide, that the parishioners of every Parish shall meet yearly in Easter week, and amend the high-ways leading to any market town; and the statute of 22 H. 8. ca. 5. doth provide, that the Hundred, City, Town, Parish or person certain, who ought of right to repair and amend any bridge erected in the high-way that is broken or decayed, shall repair and amend the same accordingly, upon pain of fine and imprisonment. The neglect of the reparation of high-ways and bridges, is an offence against the general easements of the King's people.

Lastly, the fit pleasures and recreations of the better sort of subjects, do consist in hawking and fowling, hunting and fishing. First, therefore, to take any young hawks eggs out of the nest, and to drive away the old hawks from their eyries, contrary to the statute of H. 7. ca, 7: 5 Eliz. ca. 21. et 3 Jac. ca. 13.

To hawk or hunt with spaniels in any corn ground before the corn be cut and stocked; contrary to the statute of 23 Eliza. ca. 1. et 7 Jac. ca. 12. To kill any pheasant, patridge or wild fowl, with any gun, crossbow or long bow, or take any fowl with nets or setting dogs, or to destroy their eggs in their nest, or to buy to sell again, any patridge or pheasant, contrary to the statute of 1 Jac. 27. et. 7. Jac. ca. 11.

Secondly, to hunt or kill any deer or conies in any park or warren, without license of the owner of the grounds; contrary to the statute of

3 Jac. ca. 23. et 7 Jac. ca. 13. To trace hares in the snow, and so to kill them contrary to the statute of 1^o Jac ca. 27.

Thirdly, to fish in any several ponds, moat or stream against the will of the owner, or to break or to destroy the heads or dams of any such ponds or streams: all these are offences against the laws made for the maintainance of the pleasures and recreation af the better sort of subjects.

THE CONCLUSION.

Thus you see how the wisdom of our parliaments from time to time, have provided a salve for every sore and a remedy for every mischief; and you see how the law descends from the highest treasons to the lowest felonies, and the greatest contempts of misprision and præmunire to take order for rogues and alehouses; for cottages for labourers and the poor; which may seem in some mens opinion small things and a small consideration, when indeed they are matters of great consequence and importance. And for such I am directed to recommend them not only to you but to the Justices of Peace and to the whole country; for the King himself in that excellent Charge which he was pleased to give unto the Justices of Assize in the Star-chamber (wherein he shewed the large capacity of his understanding, comprehending the greatest things and withal apprehending the last) did not omit to speak of these things in particular, but did charge the Justices of Assize, to take special care thereof, as of matters of great moment; for that the same did touch and concern great multitudes of people. And the glory of a King doth consist in the multitude of his subjects. And therefore these laws which do provide for the

common good of the Common People, are most carefully to be put in execution, *Bonum quo com* *eo melius*, water is best though gold be most precious (so the old Greek poet Pindarus begins his Booke) things for common use are best in truth and deed, though rare things be in more estimation in the opinion of some men.

But you my Masters, serve for the Commonwealth of your Country; and it lieth much in your power to procure the common good of your Country; and I doubt not but your will shall concur with your power, since yourselves (amongst others) have a share and interest in the common good, *Morum quos fecit premio censor habet*; for it is by your diligence, offenders be discovered, brought to Justice, and punished; you shall *tollere omne malum de Israell*. All the offences against the Law (whereof I have spoken before) will in a short time cease to be committed within your Country. There will be no place for treason, felony, extortion, oppression, force or fraud; no lewd disorderly person will abide amongst you. Then shall you reap the fruit of your honest service by enjoying peace, plenty, and security, which I spake of in the beginning. Specially if by your Inquiry and Presentment, the laws made for the honour and service of God may be put in execution, and thereby your recusants might be brought to Church; so all the inhabitants of your Country might serve God as they ought and praise and magnify His name together, as is said in the Psalm: "for then shall the Earth bring forth her increase, and God even our own God will

give us His blessing." To which blessing, my Masters, I commit you all, together with the public service we have now in hand.



6

V. ANTIQUARIAN ESSAYS.

1601.

NOTE.

These Antiquarian Essays are derived from "A Collection of Curious Discourses written by Eminent Antiquaries upon several heads in our English Antiquities. Together with Mr. Thomas Hearne's Preface and Appendix to the former edition. To which are added a great number of Antiquary Discourses written by the same Author. Most of them were first published from the original manuscripts. In Two Volumes, London 1771 8vo." On this work and the occasion of these and related Essays see our Memorial-Introduction.—G.



I. OF THE ANTIQUITY, AUTHORITY
AND
S U C C E S S I O N
OF THE
HIGH STEWARD OF ENGLAND.

I think the office to be ancient, but do not find that it was an office of continuance in the officer to whom it was granted, as the other great offices of high-constable, high-marshal, and great-chamberlain of England were; which have all been offices of inheritance. But the grant of this office was always (for ought I can learn) in nature of a commission, which as soon as it was executed *hac vice*, was determined. For it was ever granted to some great personage, either upon the arraignment of a peer, or to decide controversies at the king's coronation, for performances of these services only; which being done, the office did cease, whereof he made demonstration by breaking his white rod.

Notwithstanding 1 H. 4. it is asserted in our year-book upon the arraignment of Holland earl of Huntington, that because the office of steward of England was then void, the king granted the office to the earl of Devonshire to do right to the said Earl of Huntington, and commanded by the said commission, all the lords to be attending on him: which note that the office was then void,

doth seem to imply, that it had been an office of continuance, and that it was then void by accident; yet in the same year the same king had granted the office of high-steward of England to Thomas his son at his coronation. For the antiquity, perhaps it hath been an office at the coronation ever since the Conquest; for the office is French: But for his power to arraign a peer of the realm, it cannot be more ancient than Magna Charta, which ordains the trial *per pares* in these words: *Nullus liber homo capiatur, vel imprisonetur, vel vilegetur, aut exuletur, aut aliquo modo destruatur, nec super eum ibimus, nec super eum mittemus, nisi per iudicium parium suorum, vel per legem terrae.*

Touching his commission at the coronation, it is diverse from that which he hath for the arraignment, and therefore, though the name be one, of lord high-steward of England, yet the offices are in nature altogether diverse. For at the coronation he hath power to decide differences that arise touching places of service at the coronation, whereof there is a noticeable precedent, 1 H. 4. where Thomas duke of Exeter, the King's second son, was made lord high-steward of England, assisted by the earl of Worcester; which office the commission votes to have been belonging to Henry the IV. before he was a king, in right of his earldom of Leicester.

Touching his commission for the arraignment of a peer, he hath power to make a precept to his serjeant at arms, to summon twenty or more lords of Parliament, and the like to the Constable of the Tower, for the former to appear before him at the day of arraignment. At which day he hath

a court erected in the King's hall, where both the sergeant and the constable return their precepts. Then the lord high-steward declares the cause of the assembly, and the clerk of the crown reads the indictment, to which the peer pleads, and puts himself to be tried by God and his peers. Then the king's counsel give evidence, which they having done, the prisoner is retired from the bar; the lords consult of their verdict, and having returned, the lord-steward demands of every one his verdict particularly, beginning at the youngest, and if the greater part acquit or condemn, he gives judgment accordingly.

Thus much for the lord high-steward of England; but I find other officers called lord-steward of an inferior degree, whereof one is an office permanent, and the other nominally, as the office of lord high-steward of England.

The first is the lord-steward of the king's household, which is ever an office granted for life, and is the principal judge of all matters arising within the verge; for all pleas that are decided in the Marshalsea are tried before the steward and marshal, as it is expressed in all the old statutes; and by the statute of 15 E. 2. the steward of the king's household is to make *estreats* into the exchequer of all fines in the Marshallsea.

Moreover by the statute of 3 H. 7. the lord steward of the household, with the treasurer and comptroller, have power to arraign and try any of the King's servants in the check-roll, for any conspiracies against the person of the King.

The name of this office was changed by act of parliament 23 H. 8. and called *grand mastre del*

hostell de roy, when that office was granted to Charles Brandon duke of Suffolk ; but afterwards 1 Mar. it was restored to the ancient denomination, when it was given to the earl of Arundel.

The other office of lord-steward, which is momentary, is the lord-steward, which is chosen in the higher House of Parliament, before whom writs of errors are brought to remove judgments of the King's Bench. Vid. 1 H. 7. Flowerdew's case. [pp. 35-37.]

II.—OF THE ANTIQUITY AND OFFICE OF THE EARL MARSHAL OF ENGLAND..

I do not hold this office in England to be more ancient than the Conquest ; for both the office and the name were brought in by the French, though the French perhaps borrowed the name both of marshal and seneschal from the Germans : because I cannot find how I may derive it, either name or word, of the Latin tongue, from which when it first began to degenerate, both the French, Italian, and Spanish were derived.

That the office is French, it will appear plainly, if we compare the marshals of France, and their powers, with the office of the earl marshal of England.

The French have a double exercise of their office ; *puissance de glaiue*, as Bodin calls it, and *puissance de verge* ; so have ours.

The constable of France doth by his office lead the King's army, and in his absence the marshals ; so is it in England.

The marshals in France are subordinate, and in the degree of ministers unto the constable both in war and peace ; so it is with us.

The office of the marshals of France was ever personal, and for term of life, and so it was adjudged, as Bodine writes, by an arret anno 1361, and that it could not be hereditary, because it is part of the domain of the crown of France; so was it with us many years after the Conquest: and albeit Margaret countess of Norfolk at the coronation of King Richard the second made claim to the office, as daughter and heir of Thomas Brotherton; yet it was held then to remain in the King, and the lord Henry Percy was then received to exercise the office for that time: and afterwards the Lord Thomas Mowbray, earl of Nottingham, who as I take it married that lady, had a grant of that office for his life only, and after, 9 Richard 2, had another grant to him and to the heirs males of his body begotten, and so the office began to be hereditary in that family, which continued until the daughter and heir of Mowbray was married to Howard in Edward 4th's time, and after to the family of the Howards, till the attainder of the last duke of Norfolk; since when, the office hath been twice granted, but only for life: first to the earl of Shrewsbury, and after to the earl of Essex. Notwithstanding as well when the office was annexed to a person certain, being granted but for life, as when it was hereditary, the earl marshal had always power to assign the office to a knight for life, whose misdemeanour did not forfeit the office of earl, as appeareth by the book, case of 39 Henry 6, Sir John Brandon, Sir Thomas Bouchier.

For the exercise of this office, it is of two kinds here in England, in war and in peace; in war he leads the vanguard, and doth quarter and lodge

the army ; he keeps a roll of the names of all the king's soldiers, and therefore when escuage is demanded after a voyage royal, if the tenant allege that he went with the king to Scotland, it shall be tried by the certificate of the earl marshal ; so upon an *essoine de servitio regis*, upon the marshals certificate the *essoine* was warranted.

The marshal was never commanded to watch, but his office was ever to relieve the watch ; and if any hunting games were made while the army lay in the field, the constable and marshal did govern them, and the constable was to have all the horned beasts, and the marshal all the spotted beasts ; and if any prisoner did escape from his owner and were taken by the watch, the marshal was to have him as a stray ; besides the marshal was to have of every victualler, armourer, tailor, barber, &c., fourpence *per diem et de chescun femme de folie* four pence *per diem* ; and in the course of war the constable and the marshal were ever the judges.

In the time of peace the marshal also is a principal officer, for to that end the rod or verge is given unto him at his creation, and is called *virga pacis* ; for by his office he is a conservator of the peace throughout the kingdom, as well without the verge as within ; and therefore in the book of the peace, my lord of Essex, when he was marshal, was named in every court, as well as the chancellor and treasurer. But he had special jurisdiction within the verge, which is twelve miles round about the tonnel of the King ; for so it is called in the statute of 13 Richard 2.

Ne de caetero concupiscatur ad libidinem, he is to clear the King's home of all disorderly and lewd

persons; he is to banish all lewd women upon several pains, and after the fourth warning to cut off their upper lip.

He was wont to sit as a principal judge both in the King's-bench and in the exchequer; for those courts did ever follow the King's household, and so were ever within the verge, and all prisoners committed by those courts were committed to the marshal; and therefore by his office he ever had an under-marshal in both those courts; which jurisdiction doth continue to this day: his lodging was always appointed in the house where the King's exchequer was holden, when it was not fixed, but followed the court.

Besides, the constable and marshal had a peculiar jurisdiction to decide matters of appeal of treason, by combat, according to the civil law, as 37 Henry 6. is, when if one kill the other, he may justify upon a certificate of the marshal.

Besides, the marshal had another court, a clerk and a sergeant, for civil contracts arising within the verge, which is called the court of the marshalsea, when one party is of the King's household.

Besides, he is a principal officer at the coronation, and all creations of States. At the coronation he hath the King's and Queen's horses, and no layman may touch the crown but he: at creation of any duke, earl, baron, bishop, abbot, prior, and barony, their horses, and of every Knight a demy mark.

The office is grand serjeanty as appeareth in Littleton.

23 Henry 6. precedency given to him above all

earls and dukes, next the duke of Exeter, and no duke to take place except the King's son. [pp. 108-111.]





III. OF THE ANTIQUITY, USE, AND CEREMONY OF LAWFUL COMBATS IN ENGLAND.

22 MAY 1601.

OUR question is of the antiquity and manner of lawful combats, so that we do admit and pre-suppose that some combats are lawful, that is, that some combats are allowed and justified by the law. Wherein (although the law of England be distinctly contrary to the canon law, which condemneth all single fights that are voluntarily undertaken of both parties either for trial of the truth or for any cause but for defence of life or member—when a man is assaulted by his enemy, as being prohibited by God's law, which saith, *non tentabis Dominum Deum tuum*: yet) the ancient custom of this realm, which gave such allowance to this kind of trial, as that in Glanville's time, who lived under Henry the Second, it was used almost in all actions real and personal, doth not seem to be begun and continued without reason. For albeit a rash and disorderly undertaking of a combat, where the cause is not judiciously defended before the magistrate, and where it is not precluded by order or authority, may justly be condemned as unlawful; yet where there is an appeal, in an action hanging before a

lawful judge, before whom the parties are admitted to this kind of trial, this may not be deemed a wilful or voluntary act of the parties, but the act of the court, the act of law and the act of justice. Again, if by the very law of nature, a man may defend his life with his life, when he is violently assaulted by his enemy and hath no other means of escape, shall he not by the same reason defend his life with his life, when he is appealed of any capital crime, as treason, murder, or robbery, and hath no other proof to clear him? And if a man may defend his goods and possessions with his life when he is either robbed or forcibly diseized, shall he not do the like in an appeal of robbery, or in a writ of right, for the same goods and possessions? And whereas the canonist speaks of the 'tempting of God,' and compares the trial by combat to the trial *ferri candentis et aquae bulientis*, which was likewise in Glanvill's time used in England upon appeals of treason where the defendant was either 60 years old or maimed, and so disabled to deraign battle: doubtless there is a great difference between these trials, for indeed in the trial by red-hot iron and boiling water, a miraculous preservation is to be expected. And therefore it is a plain trying and tempting of God; but in an equal combat that is fought without disadvantage, the strength, the spirits, and the powers of nature do decide the controversy.

I thought it not impertinent for the honour of the law of England, which hath an excellent harmony of reason in it, to show upon what reasons it gave allowance to the trial by combat; with this, that this kind of trial hath always been an argument of a warlike and valiant nation,

though the truth be that it carries with it a little taste of barbarism. For it first took beginning among the Goths and Vandals; from them it was derived to the Saxons and other people of High Almaine; from them to the Normans; and from the Normans to us. But now let us see in what courts, for what causes, and with what ceremonies, lawful combats were used when combats were in use within this realm of England.

Trial by combat was admitted either in the court of the constable and marshal upon appeal of treason; or in the courts of the King upon appeals of murder or robbery, or for title of inheritance in a writ of right.

THE MANNER OF TRIAL BY COMBAT IN THE COURT OF THE MARSHAL AND CONSTABLE.

First, it appears by the book of 37 H. 6. fol. 20. that the law whereby the constable and marshal do proceed is the law of the Land, and the law of the King; and the King's justices shall take notice thereof. For if a man be appealed before the King's justices for the death of a man, the defendant may justify and plead that he killed him in a combat before the constable and marshal. And this is a good justification by the law of the Land.

Now for the proceeding of trial in the marshal's court upon appeals of treason, wherein the combat was admitted, it was in this manner.

First, a bill of challenge together with a gauntlet was delivered into the court by the appellant. The defendant seized the point of the bill and accepted the gauntlet. Then if the appellant had no witness to prove the matter of his appeal, the marshal prefixed a day within forty, for deraigning

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the combat, taking pledges of both parties to appear on the day, and to do battle between sun-rising and sun-setting. The place appointed for the combat was a hard and even ground, railed within certain lists, sixty foot in length and forty foot in breadth. Without the lists were certain counterlists, within which the marshal's man came as well to attend any extraordinary accident within the lists, as to keep off the press of the people without: their weapons appointed were a glaive, a long sword, a short sword, and a dagger. At the day, the appellant did appear, and came to the east gate of the lists, where he was admitted to enter by the marshal himself, together with his armour, weapons, vittaile, and his counsel with him. And then he was brought to a certain place within the lists, where he attended the coming of the defendant. The defendant, if he appeared not, was called in by three proclamations made by the marshal of the King of heralds of that province wherein the combat was derraigned.

The marshal's clerk did enter into his registry their coming and the time of their coming, and the manner, whether on horseback or on foot, the fashion of their armour and their weapons, the colour of their horses, and the like.

The marshal himself did measure their weapons; and then the marshal had a clerk ready, who brought forth a crucifix and a mass-book, whereupon both the appellant and defendant did take their oaths. But before they took their oaths, the bill of challenge of the appellant, and the answer of the defendant were read unto them by the marshal's clerk. The oaths which they took were; first, that their appeal and defence was Law;

secondly, that neither of them had advantage of the other, by weapon, charm, or enchantment; and thirdly, that either would do his best devoir to vanquish his enemy. Then proclamation was made at every corner of the lists for the closing and avoidance of the lists. And then the combatants being ready, the constable or marshal sitting at the King's feet, pronounced these words with a high voice : *Lesses les aller, lesses les aller, lesses les aller, et faire leur devoir.*

In the fight, if either of the parties did give any sign of yielding, or if the king being present, did cry *hoe*, the constable and marshal did part them, and shewed precisely what advantage or disadvantage either had of the other at the instant; for if they should be awarded to fight again, they are to be put in the same position as they were before.

If the king took up the matter, they were thought honourably out of the list, neither having precedence before the other. If the battle was performed, and one party was vanquished, then, in case of treason; the rails of the lists were broke down, and the party vanquished was driven out at a horse's heels, and carried presently to execution by the marshal.

THE MANNER OF TRIAL BY COMBAT IN A WRIT OF RIGHT.

In a writ of right, when the mise is joined to be tried by battle, the battle is ever both waged and done by champions and not by the parties. And the champions must be free men, and such as might be competent witnesses in the cause; for saith Glanville, lib. ii. cap. 3. *talis debet esse Campio*

qui sit esse posset inde testes idoneus. For this reason the parties themselves cannot in proper person wage battle, *quod id fieri non potest nisi per testem idoneum audientem vel videntem.* And therefore before the Stat. of Westminster i. cap. 40. the champion did swear, when he waged battle, that he saw the defendant or tenant take Esplees of the land, or else heard his father say on his death-bed, that he saw it, and enjoined him to testify as much. For the words of Glanville are to that effect, where he makes the defendant say, *et hoc paratus sum probare per hunc liberum hominem cui Pater suus injunxit extremis agens, in fide qua filius tenetur Patri, quid si aliquendo loquelam de terra illa audiret, hoc diracionaret sicut id quod pater suus vidit et audivit.* But because the champions were for the most part perjured in taking the oath, it was ousted by the Stat. of W. 1. cap. 40.

The champions did first wage battle; that is, they did first offer themselves to the court, and gave pledges to do battle; and then at another day they came again, and did acquit their pledges by doing or performing the battle.

THE WAGING OF BATTLE WAS IN THIS MANNER.

At the day when the tenant was demandable, the defendant's sergeant did rehearse the court. The tenant's sergeant made his defence, and pleaded, that he was ready to defend his right by the body of his free man, whom he presented at the bar, holding him by the right hand, whereon he wore a gauntlet. The defendant's sergeant replied in the like manner, and brought his champion to the bar, with the same ceremony. And this was done by the Sergeants, though the

the parties were present in proper person.

Then a day was appointed when the champions were to appear in their assay. At which day they came into the court, and the one was placed on one side of the court, and the other on the other side, bare-headed and kneeling. Then the chief-justice did call for their gauntlets and searched if there was in each gauntlet five pence, in every finger stall a penny, and then re-delivered the gauntlets to the champions. Then he demanded of both the champions severally, if they would perform the battle: and they answered that they would. He then demanded of the sergeants, if they could say ought why the battle should not proceed: and they answered, that they could say nothing. Then taking pledges of the champions he gave them a day to do their battle, charging the parties that they should not suffer their champions to come into market, fair, nor tavern, and commanding the champions, as well to do no hurt or mischief, to each other, in the mean time, as also to go, the one to Pauls, and the other to Westminster, there to offer up their five pence in honour of the five wounds of Christ, and to pray to God to give victory unto him that had right. At the day of the battle the parties and their champions did appear again at the bar; and then the count and the defence, and the continuances, and names of the champions were rehearsed.

Then the defendant brought forth his champion in red leather with a red target at his back; and a knight held his red baston or truncheon of five quarters in length, blunt at the end without a knob. Then the chief-justice did measure their staves, and searched them if they had any charm

or herb about them ; and if they found any, as they found rolls of orisons about the champion of the bishop of Sarum 29 E. 3. in a writ of right for the castle of Sherborne, they dismissed the champions for that day. But if all things were well, and without disadvantage, then they proceeded to doing of battle at the place appointed, which was commonly in some open field near Westminster, as in 13 Eliz. in Tuthill Field. A stage was erected in form of a court of justice, the lists railed in 20 yards square, and the champions were brought in by two knights, and then after proclamation made, an oath was given unto the champions, not much differing from that given in the marshall's court, and then the champions did their devoir one against the other, and according as the victory [did] fall out, so judgment final was given in the action.

THE MANNER OF GIVING BATTLE IN CASE OF
MURDER OR ROBBERY.

The defendant having pleaded not guilty, and having put himself upon defence by his body, the plaintiff was demanded by the court, and commanded to take the defendant by the left hand, and to say unto him, laying his right hand upon the book, and calling him by the name of baptism : "T whom I hold by the hand, I do hereby charge thee, that thou such a year and day didst feloniously rob me of two of my kine, and this am I ready to aver by my body as a good and lawful man, and that my appeal is true ; so help me God and his Saints." Then they disjoined their hands again, and the defendant took the plaintiff by the left hand, and

spake to him in this manner, W. calling him likewise by his christian name, whom 'I hold by the hand, thou hast falsely lied upon me, for that I did not rob thee of thy kine, as thou hast charged me, and thus am I ready to maintain by my body, and that my defence is true; so help me God and his saints.' Then the plaintiff within three days found pledges of his battle, and went at liberty; but the defendant was commanded to the marshall, who was to suffer him to have his ease, and *manger et boyer*; and the plaintiff was commanded that the night before the battle, he should come to the marshal to be assayed and armed by him, so that he might be ready the next morning at the rising of the sun to do battle. The appellants head was ever covered, but the defendant's rayed; yet upon an indictment, if the party indicted became an approver, his head was rayed and the appellants was covered, and generally in the battle, upon an appeal, the staves of the combatants had knobs, and therein differed from the bastons of the champions in a writ of right. At the time of the battle, if either of the parties was cast to the earth; the judges might interrupt the battle, and cause the party that is in such distress and disadvantage, to come before them, and then demand if he will have any more of the battle, and if he answer he will, then is he to be laid in the same disadvantage, and if he refuses to fight, he is presently to be hanged.

PERSONS EXCUSED FROM BATTLE.

- I. Clergymen: and therefore 42 Eliz. lib. cor. 99. an appelee, when he came into the field, avoided the battle by praying his clergy.

II. Citizens de Londres per charter del Citty.

III. Sexagenarii.

There is this difference between the plaintiff in an appeal and an approver; for if the appellant vanquish he shall be quit, but if the approver vanquish he may be notwithstanding executed. If an approver appeal twenty he must fight with them all one after another, but if divers approvers appeal one, if he vanquish one he is quit against all. [pp180—187.]





IV. OF THE SAME : 22 MAY 1601.

I supposed, and so it falleth forth amongst this learned assembly, whilst one treateth of one part of the question, and some of another, there would be nothing left for me to utter concerning the antiquity, ceremony and use of combats. But because I would not seem to be silent, being otherwise engaged by the Laws of this Assembly, I have undertaken to prove that combats are justly abrogated by the laws divine, civil, canon and national ; all which seem well to disallow tournaments and combats done with the sharpe, whereof death might ensue, but especially such combats whereof the authority of the judge may determine. The arguments then to prove these combats justly to be forbidden, are briefly drawn into syllogisms in this sort.

First, Every act is prohibited by the law of God, whereby God is tempted. The precept of the fourth of Matthew is *non tentabis Dominum tuum* ; but this combat is an act whereby the Divine Majesty is tempted ; for this thing is only fought therein that God would in that fight manifest by

victory whether party doth nourish the truth. Therefore it is prohibited by the law of God.

Secondly, This manner of combat is the invention of the devil, as appeareth in the laws cited by Bruceurus in his book *de Duello*. Therefore there is no man who doubeth but that it is repugnant to the law of God.

Thirdly, When a thing is prohibited by any law, that seemeth also to be prohibited, by which it is effected; but the Divine Law prohibiteth murder, therefore the means to commit murder are prohibited, and consequently a combat, the chief means to murder, is prohibited.

Lastly, Whatsoever is against charity and love of our neighbour, which is the foundation of all virtue, is expressly forbidden. But this manner of combat is so far from the love of our neighbour, that it altogether intendeth his hurt and destruction. Therefore the Scripture forbiddeth this combat.

The canon law, which pretendeth to have received its light and ground out of the Word of God, doth condemn combat in many places, which for brevity sake I omit, referring those that desire the knowledge thereof to the book of those laws.

That the law of nations hath combat in hatred, may thus be verified. All actions resisting to natural equity, upon which the law of nations is founded, are forbidden by the law of nations. Now this combat doth repugn natural equity, for the equity of the law of nations doth command, that the offenders should be punished, and the innocent absolved, which doth not always happen in combat. For often, in that fight, the just and innocent are vanquished, and the unjust and wicked are

victors. Wherefore combats are forbidden by the laws of nations. The civil law doth not inflict a corporal pain in causes pecuniary, but punisheth the offender according to the guilt of the offence; therefore the civil law in such cases doth permit no combat which tendeth to corporal punishment; being contrary to the Lombard's law, which alloweth (as I take it) first invented combats. The civil law, requiring proof as clear as day, when the plaintiff cannot prove the cause, absolveth the defendant. Therefore the civil law abhorreth combats. For how absurd a thing is it, that the defendant should be forced to try his cause by force of arms, at the pleasure of his adversary, when he wanteth sufficient proof! Again, whatsoever is done for peace, is said by the civil Bretonaine law, not to be good; but when one provoketh another to combat, in a cause depending on law, he putteth him in fear, who oftentimes for fear of future hurt letteth fall his right. Wherefore these combats are not allowed by the civil law. Moreover the law of the emperor Constantine doth defend this conclusion, the words of which law are these: *Cruenta spectacula in otio civili et domestica quiete non placent, qua propter omnino gladiatores esse prohibuimus*. And although this law seemeth specially to tend to those which were condemned to sword-play and to fight with beasts, yet the generality thereof may rightly be understood of combats; for so doth Oldradus de Ponte understand the same, with Jason and Bartholus.

Lastly, Where the magistrate or judge may by his authority compound or end any matter, there combat is not lawful. But the magistrate may end any matter without sufficient proof by com-

pling them to another, or else if there be no sufficient proof may absolve the supposed guilty. This is the opinion of most of the canonists and civilians, as of Hostientis, Bartholus, Petrus, Jacobus, and Cajacius, who calleth the law of the Lombards, to try all things by combat, a most wicked law; yea so much the laws do loath this kind of trial, that it ought not to be permitted by custom, nor confirmed by any edict.

Wherefore since spiritual laws and temporal ordinances stand against these combats, because sin and offence ariseth by them, and the damnation of the soul is often hazarded, they are wholly rejected. [pp. 186-190.]



NOTES AND ILLUSTRATIONS.

I. The following notes are from George Chalmers, as before, on Observations to the Earl of Salisbury touching the State of Monaghan, &c.

Page 143, l 15; Dr. Leland seems to have misunderstood Sir John Davies; as he states Sir John's letter to have said, "that the CORBES and HERENACHS were peculiar to "the mere Irish countries of all other parts of Christendom." Leland 4to edit. vol. ii. p. 510.

Page 143, l 6 (from bottom): The learned Usher agrees with Sir John in this description of the *Termon-lands*. See Leland, 4to edit. vol. ii. p. 510.

Page 144, l 3: The profound Usher gives a somewhat different account of the HERENACHS and CORBES. The Herenachs had two characters; partly ecclesiastical, and somewhat lay. They were admitted into deacons orders, but they never were advanced higher: and they resided on the Termon-lands, the profits of which they distributed to the Bishop and inferior clergy; to the repair of churches and the maintenance of hospitality. These services they performed under the direction and care of the CORBES, who were ecclesiastics of a much higher order, approaching nearly to the character of the Bishop, who presided over the inferior clergy. It was also the opinion of the very skilful antiquary before mentioned, that the most ancient church polity of Ireland was extremely analogous to that which once existed all over Christendom. See Leland, 4to edit. vol. ii. p. 434.

Page 158, l 1: In Hilary Term, 3 of James I. See Sir J. Davies's Reports, p. 40. The Irish Gavelkind, which was extremely different from the same custom in Kent, was declared by all the Judges to be void in law; not only for its *inconvenience* and *unreasonableness*, but because it was a mere personal custom, which tended to alter the descent of inheritances, contrary to the course of the common law, which King James had, with a wise policy, extended over all the Irish countries.

II. The Speaker's Second Speech in the Higher House

when the Lord-Deputy had approved his Election.

Agreeably to our promise (page 222) there follow here, the annotations of Dr. Leland on this Speech; but as introductory to it and them I take this account of the occasion of its delivery, from the Journal of the House of Commons of Ireland 1796 (p. 12).

DIE MARTIS, 11 OCTOBRIS, 1614.

The second Assembly of the entire House of Commons in Parliament.

WILL. JOHNSON

This Day the Speaker came to the Howse about nine of the Clocke, where Prayers being ended, the Howse became full and compleat, but did pause, and continue in Silence for a Time, till at the last a Sergeant at Armes came with a Message from the Lord Deputy to the Howse; who offering to come into the Howse, to deliver his Message himself, was commanded to forbear, for that he ought not to come into the Howse in Person, but to send in his Message by the Sergeant of the Howse, which was then done accordingly. And the Effect of this Message was, to signifie the Lord Deputie's Pleasure to bee, that the whole House of Commons should forth-with attend his Lordship in the Great Hall in the Castle, which the Howse did, according to the said Message. And there his Lordship, being sate in State, made known unto them his Majesty's Letter touching the settling of the Differences of the Howse. And thereupon the Letter was openly read by the Lord Chancellor; and soe, after some short speech made by the Lord Deputy, the Speaker, with all the rest of the Knights, citizens, and burgesses, returned into the Commons House, where the Speaker made a congratulatory Speech to the House, &c.

Page 222: The following Speech is one of the Remains of Sir John Davis, hitherto preserved only in manuscript. It was addressed by this able and judicious enquirer into the affairs of Ireland, to Lord Deputy Chichester, in the year 1613; when the Author was presented and approved as Speaker of the first House of Commons formed in this country by a general representation, instead of being confined to members sent by the counties and boroughs of the Pale. It is printed from the copy in the original Journal of this House of Commons, communicated to the author by John Lodge, Esq. It contains and I have referred to it by

the title of 'A Dissertation on the Progress and Constitution of the Legislature of Ireland.' I have ventured to subjoin a few Notes, where the positions of Davis seem liable to exception, notwithstanding the weight of his authority; or, where it was deemed proper to enforce, or to open some particulars which he hath touched lightly." (The History of Ireland from the Invasion of Henry II. with a Preliminary Discourse on the Antient State of that Kingdom. By Thomas Leland, D.D., Senior Fellow of Trinity College and Prebendary of St. Patrick's, Dublin. Dublin 1773 3 Vols. 4to.: Vol. II. Appendix pp 489-516).

NOTES ON THE FOREGOING SPEECH BY DR. THOMAS LELAND.

Page 224, l 9: 1.—"A real union," &c.] In the History of Ireland during the reign of Henry the Second, I have endeavoured to establish this position; and it is with pleasure that I find my own sentiments confirmed by so great an authority. Molyneux (in his Case of Ireland, &c.,) contends, that by the donation of Ireland to John, "it was most eminently set apart as a separate and distinct kingdom:—that the regality of Ireland was wholly and separately vested in John, being absolutely granted to him without any reservation." But we have already seen (Vol. I. p. 129) that the subjects of Ireland, in consequence of this donation, were bound not only to John and his heirs, but also to the king and his heirs: and that in the grants of earl John during the reign of Richard the First, the lord of Ireland excepts those things which *pertain to the crown*. (Vol. I. p 154). In his grant to the canons of Saint Thomas the Martyr in Dublin, his expressions are, "Volo etiam et firmiter præcipio, quod prædicti canonici habeant unum burgagium liberum et quietum ab omnibus consuetudinibus et tallagiis et omnibus demandis, præter actiones et placita, quæ spectant ad regiam coronam." (Rot. Antiq. penes Comit. Midia).

But this idea of a strict and inseparable connexion originally intended between the two kingdoms, cannot be more clearly expressed than by the words of the grant made to prince Edward in the 38^o year of Henry III. The king grants to Edward—"totam terram Hiberniæ, exceptis civitatibus Dublin et Limerick, &c., totum comitatum Cestriæ cum castris et villis,—una cum conquestu Walliæ in finibus illis,—et totam villam Bristol cum castello, &c.,—with one express restriction, with respect to the English as well as Irish territories, both of which are

considered as indiscriminately and equally belonging to the crown of England—"Ita tamen, quod prædictæ terræ et castria omnia NUNQUAM SEPARANTUR A CORONA; et quod nullus, ratione istius donationis eidem Edwardo factæ, aliquid juris vel clamei aliquo tempore sibi vendicare possit; sed INTEGRÉ MANEANT REGIBUS ANGLIÆ IN PERPETUUM." (Rymer, tom i. p 501).

Page 224, l 26 : 2.—"For the space of 140 years," &c.] According to this assertion, the subjects of Ireland had no great parliaments of their own, until the eighth or ninth year of the reign of Edward the Second. On the other hand it is contended, that Henry the Second, besides the appointment "of counties, of sheriffs and of other officers necessary for the execution of English laws, gave the new settlers of Ireland what is called *MODUS TENENDI PARLIAMENTA*. (See Molyneux's Case., &c., p 26.)—The authenticity of the record exhibited as this *Modus*, is indeed liable to many objections; yet there is some evidence that the English settled in Ireland held their great or general councils, even in the reign of Henry the Second; for a statute of Henry Fitz-Empress is recited in an Irish act of Parliament; 2 Richard III. and confirmed and ratified by this act. Nor do we want evidence of great councils in Ireland much earlier than the time assigned by Sir John Davis for the commencement of them. In the 38th year of Henry III. the king, in order to obtain aid against the king of Castile, orders a great council to be formed in Ireland, by a convention of prelates, "*cum aliis magnatibus terræ Hiberniæ*." (Rymer, tom i. p 497). About the year 1295, or to speak more precisely, not later than the year 1303, it appears from a record in the Black-Book of Christ Church, Dublin, that a grand council or parliament was held in Ireland (the proceedings of which have been already specified—Vol. I. p 53), and this with form and solemnity. The record saith, "*Justiciarius hic de communi consilio domini regis in hac terra, ad pacem firmitus stabiliendam, ordinavit et statuit generale parliamentum hic had hunc diem. Et mandatum fuit archiepiscopis, episcopis, abbatibus, et prioribus, quorum præsentia videtur ad hoc esse necessaria, nec non et comitibus, baronibus et aliis optimatibus terræ hujus, videlicet unicuique eorum pro se, quod essent hic ad hunc diem. Et nichilominus, præceptum fuit vicecomitibus Dubliniæ, Louethiæ, Kildariæ, Waterfordiæ,*

Katherlagh, Kilkennix et Ultonix, quod unusquisque eorum pro se, videlicet vice-comes in pleno comitatu suo, et senes callus in plena curia sua libertatis suæ, per assensum comitatus sui, seu libertatis, ELIGI faceret DUOS de prohibitoribus et discretionibus MILITIBUS de singulis comitatibus et libertatibus, qui hic nunc interessent, plenam potestatem habentes de tota communitate comitatus et liberatis ad faciendum &c.— Surely we have here an instance of a great council, which Davis himself would acknowledge to be a Parliament and not a Parley, earlier than the eight year of Edward the Second.

That the subjects of Ireland considered the assembling and deliberating among themselves on all national affairs, as their right and privilege established, and expressly stipulated on their first settlement, we have a clear proof in the curious record annexed to Vol. I. (see Appendix No. 2.) “We are not bound,” say the clergy of Armagh, according to the liberties, privileges, laws and customs of the church and land of Ireland, to elect or to send any of our clergy to the parts of England, unto parliaments or councils to be held in England.”—“We are not bound,” saith the sheriff of Louth, “agreeably to the rights, privileges, liberties, laws and customs of this Land of Ireland, from the time of the conquest of the same and hitherto used, to elect or send any persons from the said Land, to parliaments or councils to be held in England, to treat, consult and agree, as their writ requires.” And according to the extracts of this record which I found in the Bodleian Library, the answer of the county of Dublin was equally decided and explicit. The nobles and commons of this county declare with one voice, “According to the rights, privileges, liberties, laws and customs of the Land of Ireland enjoyed from the time of the conquest of the said Land, we are not bound to send any persons from the Land of Ireland to the parliament or council of our lord the King in England.” And these rights and privileges they claim in consideration “of the burdens they had borne and still do bear,” &c. Such were the ideas of the subjects of Ireland in the reign of Edward III.

The accurate researches of Mr. Lodge, furnish us with declarations still more explicit. In the 32d. year of Henry the Sixth, a parliament of Ireland asserts that “all the liege people of Ireland had, and used to hold parliaments without interruption, from the conquest of the said Land, by the most noble King Henry Fitz-Empress, to the present

time." And in a certified bill (Pa. Bol. 19 Hen. VI.) it is recited, that "the Land of Ireland is your Lordship's of old tyme, annexed to your crown; in which Land, ye and all your primogenitors, some tyme Kings of England and Lords of Ireland, of the tyme that none myn remeneth, have had courtes, that is to say, Chancery, Kinge's Bench, and Exchequer; and other courtes reall, that is to say, parliaments and great conseilles." It is also remarkable that the first printed statutes of the Irish legislature, were made in the third year of Edward the Second, at a time when Sir John Davis asserts that the high court of parliament had no existence in Ireland.

Page 225, l 19:—"Doubtless though the rest," &c.] In the foregoing note, arguments have been offered to prove that this is a mistaken assertion, however peremptorily delivered. And I venture to express my suspicion, that this idea of the Speaker, that "the wisdom of state of England, thought it fit to reserve the power of making laws to the parliament of England," is modern, and not suited to the time of which he treats. In these times we discover no traces of any refined speculation about dependency, subordination, &c. Princes and statesmen indolently rested the right of dominion in Ireland, on the grant of Pope Adrian even to the days of the Reformation. In consequence of this persuasion, we find that Richard the Second, in the indentures of the Irish chieftains, made the penalties on the violation of their treaty, payable in the Apostolical chamber. In the reign of Henry the Fifth, the English of Ireland petitioned the King that the Pope should be solicited to support his grant, by publishing a crusade against the rebellious Irish. In the seventh year of Edward the Fourth, an Irish Parliament formally asserts the grant of Adrian and founds the seigniorie of Ireland on this grant. Henry the Seventh addressed himself to Pope Alexander, requesting that he would fulminate his censures against the insurgents of Ireland, as if the Holy See were equally affected by their rebellions, as the crown of England. Nor was it till the eleventh year of Elizabeth that an Irish Parliament learned to derive the right of domain in Ireland from King Garmonde and King Belin.

Nor in these early days were the subjects of either country jealous of the rights of legislation. Both in England and Ireland, the attendance in Parliaments was deemed a burden. The English were generally too

inattentive to the affairs of Ireland, to reserve or assume, or claim the power of regulating the infant settlements. The subjects of Ireland had received the English land as their stipulated right and a right repeatedly confirmed to them. They never conceived the transmission of such statutes, at least, as declared or explained the law, as an infringement of their right. They sometimes solicited them; they received them gladly, they adopted them in their councils, they promulgated them in their cities, and enrolled them in their courts, without ever scrutinizing the authority by which they were originally enacted in another place. I presume not to enter into the discussion of any critical or obnoxious questions in law or politics. I mean but to assert that such questions were not agitated in these early periods.

Nor is the change wrought by time in the ideas and sentiments of a people wholly unworthy of regard. Mr. Prynne discovered a writ whereby several lords of Ireland were in the eighth year of Edward II. summoned to a parliament at Westminster. (See *Animad.* p 260.) He was scandalized at the discovery; he insisted that they were summoned only as commissioners or agents, not as members of parliament; "because," saith he, "the writ doth not contain the addition of *vestrumque consilium impensuri*, added to all writs of summons to prelates and temporal lords who are members of parliament, and to all the King's counsel summoned as assistants." But the insertion of these words doth not seem to have been established at this time, by ancient and uniform usage, as essential to a writ of summons. In the 23rd, in the 30th, in the 33rd of Edw. I. in the second of Edw. II. and in the seventh year of the same reign, we meet with undoubted writs of summons which have not these momentous words. (See Dugdale's *Summons to Parliament.*) Mr. Prynne doth not explain how agents or commissioners should be called from Ireland by the King, to treat and confer not only on the state of their own country, but also *de aliis negotiis arduis et urgentibus nos contingentibus*. His records might have informed him, that in the second year of this very reign, a bishop-elect of Dublin, received his writ of summons to a Parliament at Westminster, as a bishop; and with other bishops. (See Dugdale *Summ. to Parl.*) The honour which Prynne denies the subjects of Ireland, they were not in these days solicitous to claim. It now appears, that they regarded it

not as an honour but a grievance : and it was even esteemed a hardship that a lord of England, accidentally residing in Ireland, should be summoned from thence to a parliament of England. Thus it appears from a Close Roll of Edw. II., that the King omitted Roger Mortimer of Wigmore in his first writ of summons to a parliament at Lincoln, because he was in Ireland : but understanding he had come to England, he commanded Mortimer by a special writ to attend this parliament, *provided he was not to return to Ireland before its meeting.* (See Prynne's *Animad.* p 261.)

Page 230, l 18 : " This latter act is that we call Poyning's ; and is indeed," &c.] The Reader desirous of pursuing his researches herein will find in Dr. Leland's note II. (Vol. II. pp 511-516) an elaborate and learned dissertation on this famous Act. It has fitting place in a History of Ireland ; but it is too lengthy and discursive for these Notes. I content myself therefore with the reference to a permanently interesting and weighty discussion—all the more that it sheds light on later parliamentary grievances and debates in England.

It was my intention to have added other Notes and Illustrations, as promised, to several places of the Prose Works ; but the Memorial-Introduction has so grown and the materials otherwise have so encreased, that I have felt constrained to suppress them as well as an *Index Rerum* that I had prepared. G.

END OF VOL. III.

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